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Nainesh Shah

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Ashok Mohanani

JT. TREASURERS

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Sujal Shroff

Parag Munot

Rajan Bandelkar

Vikas Walawalkar

Jayesh Shah

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Sanjay Chhabria

Rajendra Chaturvedi

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Rakesh Sanghvi

Jagdish Ahuja

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Thane

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Shailesh Sanghvi, Secretary
Mira Virar City

Rajesh Prajapati, President
Raigad

Arvind Goel, President
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Mofatraj Munot

Niranjan Hiranandani

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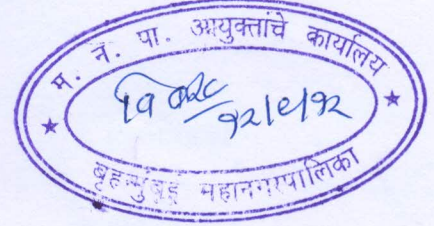
(Late) Babubhai Majethia

Ref. No.: MCHI/PRES/12-13/047

Tuesday, September 11, 2012

To

Shri Sitaram Kunte
Municipal Commissioner
Municipal Corporation of Greater Mumbai
Municipal Head Office, Mahapalika Marg,
Mumbai - 400 001.



**Sub.: Development Plan (DP) proceeds over Town Planning (TP) /
Reserved Land (RL).**

Respected Sir,

In recent times, Hon'ble High Court, for project Kawaliwadi has clarified that Development Plan (DP) prevails over Town Planning (TP) even if Town Planning (TP) is at a later date (copy of the Judgment enclosed for your reference).

In view of this, we request you to please clarify that Development Plan (DP) be considered as final for any development and as such Development Plan (DP) will prevail upon Reserved Land (RL) if Reserved Land (RL) is prior to Development Plan (DP).

Thanking you,

Truly yours,
For MCHI-CREDAI

Paras Gundecha
President
Mobile: 98210 92439

Encl.: Hon'ble High Court Order for Kawaliwadi.

MCHI-CREDAI (ISO 9001:2008)

Maker Bhavan II, 4th Floor, 18, V. Thackersey Marg, New Marine Lines, Mumbai - 400 020.

Tel.: 4212 1421, Fax : 4212 1411/407, Email : Secretariat@mchi.net

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pdp

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1731 OF 2009

Shree Vardhaman Stanakvasi Jain
Shravak Sangh – Dadar by its
Trustees 1) Mr. Shantilal Dunganarshi Maru
and ors.

.. Petitioner

Vs.

1. The Municipal Coporation of Gr. Mumbai
and ors.

.. Respondents

WITH
PUBLIC INTEREST LITIGATION (L) NO. 64 OF 2012

Shri Agartad Shri Shatinathji Maharaj Jain
Derasar Trust – Dadar, Through one of its
Trustee Shri Suresh Kumar Shivrajji Lodha

.. Petitioner

Vs.

1. The Municipal Corporation of Gr. Mumbai
and ors.

.. Respondents

Mr. Mukesh Chheda i/by M/s. Thakordas & Madgavkar for petitioner in
W.P. No. 1731 of 2009.

Mr. A. J. Bookwala, Sr. Advocate i/by Mr. Vijay Sharma for petitioner in
PIL (L) No. 64 of 2012.

Mr. Y. S. Jahagirdar, Sr. Advocate a/w Ms. P.A. Purandare & Ms. T. H.
Puranik for BMC.

Mr. Aspi Chinoy, Sr. Advocate a/w Mr. Pravin Samdani, Mr. A.A. Joshi and Mr. Satyen Vora i/by M/s. Markand Gandhi & Co. for respondent no.5.

Mr. Shekhar Napahde, Sr. Advocate a/w Mr. Girish Godbole & Mr. Kishore Jain i/by M/s. Niranjan & Co. for respondent no.6.

Mr. P. G. Lad, AGP for State.

Mr. A.Y. Sakhare, Sr. Advocate i/by Renuka Lele for Intervenor.

CORAM: S. A. BOBDE &
MRS. MRIDULA BHATKAR JJ.

JUNE 26, 2012.

P.C.

1. The earlier order passed by this court, granting an injunction restraining the respondents from developing the property in question, in effect, has been set aside by the Supreme Court. The Supreme Court, by the order dated 14/10/2011, has directed this court to consider the question of interim relief afresh and pass a fresh speaking order.

2. The main contention of the petitioner is that the re-development of Plot No, 267 at Mahim by permitting not only housing the dis-housed according to the reservation but also for permitting construction and sale of about 800 sq.mtrs. on commercial basis is illegal and the

respondents must be restrained from carrying out any construction. The main contention of Mr. Chheda, the learned counsel for the petitioner, is that in the Town Planning Scheme the Plot No. 267 is shown as reserved for a school in the year 1966 and subsequent reservation of the plot for housing the dis-housed under the Development Plan finalized in 1991 is grossly illegal for two reasons; (1) the Development Plan has been illegally finalized and (2) that it is contrary to the Town Planning Scheme which is not permissible.

3. As regards the first contention, it is not disputed that the petitioner did not, at any point of time throughout the stages of the Draft Development Plan and the stage of inviting objections and the finalization, raise any objection of any nature to the finalization of the Development Plan. The contention that the Development Plan has been finalized illegally in that the Corporation has failed to mention any change of user in Plot No. 267 and to submit its decision on the objections to the Government cannot be accepted, prima facie, in view of the stand of the Corporation that the Corporation submitted only its decision regarding user where, according to practice, objections had been raised. As regards the other contention that

the Development Plan cannot be given any effect since the reservation contained therein is contrary to the reservation in the Town Planning Scheme, the matter must be taken to be covered by the judgment of the Supreme Court in case of Shri Girish Vyas & anr. vs. The State of Maharashtra and ors. [JT 2011 (12) SC 298], where after considering the entire scheme of the Maharashtra Town Planning Act in this regard and the purpose of a Town Planning Scheme and the making of a Final Development Plan, the Supreme Court came to the conclusion in paragraph 78 as follows:-

“78. Thus from the analysis of the relevant provisions and the judgments it is clear that the right claimed under the erstwhile T.P. scheme could not be sustained in the teeth of the reservation for a Primary School under the 1987 D.P. plan. The submission in this behalf cannot be accepted.”

Earlier, in the judgment the Supreme Court has made specific observations that the Planning Authority cannot act contrary to the

Development Plan and grant development permissions to defeat the provisions of D.P. Plan vide paragraph 66. The Supreme Court has thus clearly held that the land cannot be put to use in any way in contradiction with the provisions of the D.P. Plan. In the present case, the D.P. Plan having been reserved the land in question for the purpose of housing the dis-housed and not for a school as in the Town Planning Scheme, we have no hesitation in coming to the prima facie conclusion that the proposed development is not illegal for this reason.

4. It was contended by Mr. Bookwala, the learned counsel for the petitioner in PIL, that the Municipal Corporation has illegally diluted the reservation for housing the dis-housed and permitted the construction of housing meant for free sale since there were no grade "A" structure on the land as contemplated by D.C. Regulation 33(7) and in any case the notification of 1992 under which the dilution has been permitted can only apply to re-development under D.C. Regulation 33(10). We see no merit in this contention. In the first place, the certificate of the Corporation at Annexure - II clearly shows the existence of structures on the property which are constructed prior to 1940. Moreover, it is clear from the Clause

7 of Appendix III that the construction or re-construction of an old building can be permitted in accordance with notification dated 3/6/1992 issued under Section 31 of the M.R.T.P. Act.

5. Mr. Jahagirdar and Mr. Chinoy, the learned counsel for the respondents, submitted that the petitions are mala fide since the petitioner, who is the owner of Plot No. 265 had encroached 536 sq.mtrs. of land which was part of Final Plot No. 267 i.e. the land in question. In fact, the Corporation also obtained an undertaking from the petitioner to vacate the land and the petitioner in WP No. 1731 of 2009 had moved this petition and also inspired the PIL to stall the re-development of Final Plot No. 267 so that he could hold on to the area of 536 sq.mtrs. Though it seems to be a fact that the petitioner in WP No. 1731 of 2009 had given an undertaking in regard to 536 sq.mtrs. land, it would not be possible to come to a definite conclusion at this stage and dismiss the petition as mala fide. As regards the balance of convenience, we are inclined to uphold the contention of Mr. Naphade, the learned counsel who appeared on behalf of the occupants who have vacated the land for the purpose of re-development in the year 2008 and living in shabby condition since then. We see no

reason why the re-development of the property should be withheld at the instance of a person who does not have any immediate right in the property and in any case at the instance of a petitioner purportedly acting in a public interest.

6. Having regard to the totality of the circumstances, we find no reason to grant any interim relief. The prayer for interim relief is rejected.

7. At this stage, Mr. Chheda, the learned counsel for the petitioner, prays for a stay of this order. In the circumstances of the case, we see no reason to grant such a stay. Prayer is rejected.

(MRS. MRIDULA BHATKAR,J.)

(S. A. BOBDE,J.)