

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.369 OF 2016

Mayfair Housing Pvt.Ltd. ... Petitioner
v/s
The Municipal Corporation of Greater
Mumbai and others ... Respondents

WITH
WRIT PETITION (L) NO.433 OF 2016

Mr Suresh N. Gandhi and others ... Petitioners
v/s
The Municipal Corporation of Greater
Mumbai and others ... Respondents

Mr Ravi Kadam, Sr. Counsel with Mr Prateek Seksaria, Mr Nivif Srivastava, Mr Niel Mandevia, Mr Harsh Behany, Mr Nakul Jain, Ms Niyati Shah and Ms Aakashsha Kusumgar i/b M/s Maniar Srivastava and Associates fir Oetutuiber ub WP No.369 of 2016.

Mr Navroz Seervai, Sr. Counsel with Mr Vineet Naik, Sr. Counsel i/b Mr Arun Panickar for Petitioner in WP No.433 of 2016.

Mr J. Reis, Sr. Counsel with Mr H.C. Pimple and Ms Geeta Joglekar for Respondent Nos.1 and 3 – BMC.

Mr Y.R. Mishra with Ms Jyostna Pandhi and Mr Upendra Lokegaonkar for Union of India.

CORAM: V.M. KANADE &
B.P. COLABAWALLA JJ.

DATE : 10TH MARCH 2016

P.C. :-

1. Heard Mr Ravi Kadam, learned Senior Counsel for the Petitioners, Mr Reis, learned Senior Counsel for the Corporation and the learned Counsel for the Union of India, who seeks eight weeks' time to take instructions and file an affidavit in reply to the Petition.

2. The Petitioners in Writ Petition No.369 of 2016, being developers, are aggrieved by Condition No.19 which was imposed by the Municipal Corporation of Greater Mumbai by their letter dated 18th November, 2015. This condition stipulates that a NOC from the Defence Establishment i.e. COD, Kandivali is necessary before Occupation Certificate can be granted in favour of the Petitioners.

3. The brief facts are that the Petitioners applied for approval of layout for the development of the land and proposed construction of two buildings i.e. a rehabilitation building and a resale building. This application was filed on 31st October 1998. On 31st May 2000, IOD was issued. The said IOD does not mention that the Petitioners

are supposed to obtain NOC from the Central Ordinance Depot, Kandivali.

4. The Petitioners completed construction of the rehabilitation building on 1st December 2005 and a Occupation Certificate was issued by the Corporation in relation thereto, which is known as Shaligram Building and constructed on the same plot. This building is a ground plus seven floors' structure and is fully occupied by tenants since 2005.

5. The Petitioners thereafter by their letter dated 16th April 2007 made an application for amendment of plans for the resale building which was granted on 6th June 2007.

6. On 4th November 2010, a Circular was issued by the Department of Urban Development, State of Maharashtra to the Corporation stating therein that NOC of Defence Authorities should be taken prior to grant of development permission in the vicinity of the Defence Establishments.

7. Thereafter, on 18th May 2011, an internal communication was issued by the Ministry of Defence laying down the guidelines which were to be followed. The said internal communication, in order to reconcile the conflicting interest of the Defence and that of the citizen who intends to develop a building on his plot of land, prepared guidelines merely laying down that only in the event of there being any statutory provision in the local municipal laws which required permission of the Defence Authorities being taken, only in such cases condition of obtaining NOC from the Defence Authorities should be imposed. However, it clearly mentioned that if there is no such statutory requirement imposed by any statute or regulation, then the concerned Station Commander is to assess the situation and then refer the matter to the next higher authority. Only if the higher authority is convinced that there is a possibility of a security hazard, he may then convey his view to the local Municipal Authority.

8. It is an admitted position that under the old IOD or in the new IOD, which was granted between 25th August 2013 to 4th August

2014, did not require the Petitioners to obtain NOC from COD, Kandivali.

9. On 21st February 2015, the State of Maharashtra through its Department of Urban Development issued a Circular dated 21st February 2015 which was in supersession of all earlier Circulars, particularly Circular dated 4th November 2010 and which stated that no NOC would be required from the Defence Authorities for permitting development around Defence Establishments. The said Circular in terms mentioned that the previous Circular dated 4th November 2010 is expressly cancelled. It is a settled position in law that a Circular / Notification which is issued under section 154 of the MRTP Act has a statutory force and is binding on the Authority.

10. The learned counsel appearing on behalf of the Petitioners submitted that in the present case, the IOD was issued on 31st May 2000 and the amended plans were approved on 6th June 2007. The entire resale building was constructed in all respects in the first week of November 2015 and therefore even otherwise the Circular

which was issued by the Department of Urban Development dated 4th November 2010 would not apply to buildings where plans were already approved. It is submitted that Condition No.19 could not have been imposed by the Corporation as the said condition was not imposed on the basis of any Provision, Rule, Notification or Regulation framed under any Act or Rules.

11. It is submitted that the Corporation in their affidavit in reply has in turn accepted the position that the condition No.19 imposed while processing the application for grant of Occupation Certificate, does not have the force of law and it was not imposed on account of any statutory provision.

12. Mr Reis, learned Senior Counsel appearing on behalf of the Corporation, on the other hand, submitted that the Corporation had received a letter dated 5th December 2015 from the Administrative Officer of COD, Kandivali asking the Corporation to examine and confirm whether sanction as mentioned in the said letter was in accordance with the guidelines issued by the Government of India on

18th May 2011.

13. We are of the view that Condition No.19 at least prima facie could not have been imposed by the Corporation. Admittedly, there is no statutory provision which requires that NOC from COD, Kandivali or any other Defence Establishment has to be taken before the grant of the Occupation Certificate to the Petitioners.

14. In the present case, IOD was granted in the year 2000, amended plans were approved in 2007 and the rehabilitation building was constructed and Occupation Certificate was granted on 1st December 2005. Therefore prima facie, the question of now obtaining NOC from the COD, Kandivali does not arise. Furthermore, even the Circular dated 4th November 2010 was withdrawn by the State of Maharashtra on 21st February 2015. There was therefore no occasion for the Corporation to impose this condition on 18th November, 2015.

15. Even otherwise, the guidelines which have been issued by the Defence Ministry clearly reveal that in the absence of any statutory provision in the local municipal laws requiring a NOC of the Defence Authorities, a discretion vests with the Station Commander or any higher Officer to decide whether the building which is constructed within a 500 mtrs radius of the Defence Establishment is likely to create any security hazard for the Defence. It is an admitted position that apart from the present building, there are several other buildings which have been constructed and at no point of time the Station Commander or any higher Officer has taken any objection in writing taking exception to any construction of any building within the radius of 500 mtrs. of the Defence Establishment in question.

16. We must mention here that the Corporation also in their affidavit in reply dated 23rd February 2016 at para 6(x) has clearly stated that till today the Defence Authorities have not informed the Corporation regarding the redevelopment of old dilapidated buildings in the vicinity of the Defence Establishment, Central Ordinance Depot, Malad and Kandivali and demarcation of the COD boundary,

despite the Corporation submitting several letters to various Offices of the Defence Authorities situated in Mumbai and also in Delhi with a request to inform them regarding such redevelopment, no response has been received to the letter.

17. We are therefore satisfied that at least prima facie the said Condition No.19 could not have been imposed by the Corporation as a condition precedent for grant of Occupation Certificate.

18. This brings us to Writ Petition (L) No.433 of 2016 which is filed by the flat purchasers who have purchased flats in the resale building. They have stated that they have taken loans from Banks of more than a crore of rupees and they are required to pay Monthly Installments to repay their loan. It is submitted that the developer was supposed to deliver possession of the flats in December 2015.

However, on account of Condition No.19 being imposed by the Corporation the Occupation Certificate is not yet granted by the Corporation. Consequently, the developer has not handed over possession to the Petitioners. It is submitted that the Petitioners have

booked the flats and paid all the installments in time and at no point of time they were informed that it is necessary to obtain NOC from the Defence Establishment.

19. Taking into consideration the aforesaid facts, we are of the view that this is a fit case that a direction, by way of interim relief, can be given to the Corporation to process the application filed by the Petitioners (Mayfair Housing Pvt.Ltd.) for grant of Occupation Certificate without insisting on compliance of Condition No.19 and to process the same expeditiously and in any event within a period of three weeks from today. Needless to mention that the Petitioners will have to comply with the other conditions stipulated by the Corporation in their letter dated 18th November 2015.

20. Stand over to 3rd April 2016.

(B.P. COLABAWALLA, J.)

(V.M. KANADE J.)