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

**WRIT PETITION NO. 1491 OF 2018**

**1. Dhiren Co-Operative Housing Society Ltd. And Ors. ...Petitioners**

Having its registered office at 30, Nathpai Nagar, Opp. Pune Vidyalaya Bhavan, Ghatkopar (East), Mumbai – 400 077.

***Versus***

**1. State of Maharashtra & Ors. ...Respondents**

Ms. Dhawani Bokaria, I/b M/s. Purnanand & Co. for the Petitioners.

Ms. Pallavi Thakar, for Respondent – BMC.

Ms. Uma Palsule – Desai, AGP for Respondent – State.

**CORAM: A.S. OKA &  
RIYAZ I. CHAGLA, JJ.**

**JUDGMENT RESERVED ON 24TH JULY, 2018**

**JUDGMENT PRONOUNCED ON 14TH AUGUST, 2018**

**ORAL JUDGMENT :- (Per Riyaz I. Chagla J.)**

1. Heard the learned counsel appearing for the Petitioners, the learned AGP for Respondent Nos. 1 and 2 and the learned counsel appearing for Respondent Nos. 3 and 4.

2. Rule. The Respondents waive service. Considering the narrow controversy involved in the matter, the same is taken up for final disposal.

3. The Petitioner No.1 is a Co-operative Housing Society duly registered under the Maharashtra Co-Operative Housing Societies Act, 1960 on 4th May, 1967. The Petitioner No.2 is a partnership firm with whom the Petitioner No.1 has entered into agreement for redevelopment of land bearing plot No. 13 situated at 30, Nathpai Nagar, Opposite Pune Vidyalaya Bhavan, Ghatkopar (East), Mumbai – 400 077 (for short “the said property”).

4. The Petitioners by this Petition are seeking direction against the Respondent No.3 to forthwith withdraw the condition “to submit Collector's NOC for Occupancy Certificate” and to direct Respondent No.4 to proceed further with the application of the Petitioners for Occupation Certificate without insisting upon permission / NOC from Respondent No.2. The Collector by an order dated 8th December, 1966 allotted the said property to the Petitioner No.1. Pursuant to being allotted the said property, Petitioner No.1 has constructed a building which was occupied by its members. Since the building was old and required heavy repairs, Petitioner No.1 decided to redevelop the said property and selected Petitioner No.2 as a Developer. The Petitioner No.2 has submitted a building plan which has been duly sanctioned by Respondent No.2 who has issued IOD dated 13th May, 2015. Upon issue of the IOD, members of Petitioner No.1 have vacated

their respective premises and the building has been demolished. Respondent No.3 has issued Commencement Certificate dated 9th November, 2015. In accordance with the sanctioned building plans, Petitioner No.2 has carried out and completed construction of the building. The Petitioner has through their Advocate submitted an Application on 23rd September, 2017 for grant of Occupation Certificate since the Petitioners had complied with all the conditions. This application was uploaded by the Petitioners Architect as per the procedure of Respondent No.3 – Corporation and also submitted physical copy of the application to the Respondent No.4. However, the Respondent No.4 despite being satisfied with the work carried out by the Petitioners in accordance with the sanctioned plan has not issued Occupancy Certificate and directed the Petitioners to submit the Collector's NOC for the Occupancy Certificate. Being aggrieved, the Petitioners have filed the present Petition.

5. The learned counsel for the Petitioners has submitted that the condition “to submit a Collector's NOC for Occupancy Certificate” can no longer be insisted upon by Respondent No.4 for issuance of occupancy certificate as this issue has been decided by this Court in ***Hiren Bharani and Ors. Vs. State of***

**Maharashtra and Ors.**<sup>1</sup> and which is followed by this Court in **Shri Chandravandan D. Gohil Vs. State of Maharashtra and Ors.**<sup>2</sup> It has been held in the decision of this Court in **Hiren Bharani (Supra)**, that the circular dated 31st October, 2001 which directs occupants of the land to produce NOC from the Collector for the proposed development is without authority of the law. She has accordingly submitted that the Respondent Nos. 3 and 4 be directed to issue Occupation Certificate without insisting upon permission / NOC from Respondent No.2.

6. The learned AGP appearing for the Respondent Nos. 1 and 2 – State and learned counsel appearing for the Respondent Nos. 3 and 4 have supported the impugned action of Respondent Nos. 3 and 4. The learned counsel for the Respondent Nos. 3 and 4 has relied upon the Affidavit of Shri Prakash Sakharam Patil working as Assistant Engineer (Building Proposal) 'L & N' Ward, E.S. with the Respondent No.3 – Corporation dated 23rd July, 2018. She has submitted that the said condition is provided in the IOD viz. Condition No.62 and is required to be complied with by the Petitioners prior to issuance of the Occupancy Certificate. She has submitted that the Architect of the Petitioners in the plinth

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1 Writ Petition No. 3119 of 2003 decided on 5th October, 2006.

2 Writ Petition No. 1837 of 2015 decided on 14th December, 2017.

C.C. report dated 17th July, 2015 has stated that the said condition No.62 viz. obtaining Collector's NOC will be submitted by the Architect in due course. A registered undertaking has been submitted from Petitioner No.2 - Developer to the Respondent No.3 – Corporation which clearly mentions that the Developer will be responsible for obtaining NOC from the Collector on payment of dues, penalty, etc. for the proposal under consideration. She has thus submitted that the Petitioners have accepted that the Condition No.62 in the IOD viz. that the Collector's NOC would be obtained prior to issuance of the Occupancy Certificate is binding on them. She has referred to the said Affidavit where it is stated that the Collector vide letter dated 16th October, 2017 informed the Respondent No.3 – Corporation regarding the said procedure to be adopted in cases / proposals where plots belong to the Collector are allowed to redevelopment. In such cases Occupancy Certificate shall be granted only after obtaining NOC from the Collector. She has submitted that as a result of the Collector's NOC not having been obtained by the Petitioners, the online proposal for grant of Occupation Certificate was rejected on 3rd April, 2018.

7. We have considered the submissions. The issue of obtaining the NOC from the Collector prior to issuance of the

Occupancy Certificate is no longer *res integra*. The Division Bench of this Court in the case of **Hiren Bharani (Supra)** has held the circular dated 31st October, 2001 issued by the State Government to the Municipal Corporation directing the Municipal Corporation to incorporate the condition of obtaining NOC from the Collector for the proposed development to be without the authority of law. This has been followed in decisions of this Court, including in **Shri Chandravandan D. Gohil (Supra)**, wherein the Division Bench comprising one of us (A.S. Oka, J.) has held that the Respondents shall not insist on the Petitioners complying with the said condition of obtaining NOC from the Collector for the proposed development. These decisions are applicable in the present case and condition No.62 in the IOD cannot be insisted upon by the Respondents prior to issuance of the Occupancy Certificate. Although the Petitioners have incorrectly stated in paragraph 6 (c) that there is no condition in the IOD to obtain NOC from the Collector, this statement is corrected in the Affidavit filed on behalf of the Respondent Nos. 3 and 4 as a reference is made to condition No.62 in the said IOD which provides for such a condition. We are of the view that it is no longer open for the Respondents to submit that the conduct of the Petitioners and / or the undertaking of the Developer to obtain NOC from the

Collector estoppes them from contending otherwise. It has been clearly held by this Court in the above decision that the condition of obtaining NOC from the Collector prior to issuance of the Occupancy Certificate is without the authority of law.

8. We accordingly pass the following order:-

(i) We order and direct the Respondent Nos. 3 and 4 to consider the prayer for grant Occupancy Certificate without insisting on condition NO.62 in the IOD viz. obtaining permission / NOC from Respondent No.2 being complied with, provided all other conditions in the IOD dated 13th May, 2015, if valid as of today, have been complied with by the Petitioners.

(ii) We make it clear that we have made no adjudication on the question of title claimed by the Petitioner No.1 to the said property.

(iii) Rule is made absolute on the above terms with no order as to costs.

**(RIYAZ I. CHAGLA J.)**

**( A.S. OKA, J.)**