SUPREME COURT OF INDIA

Mun.Corp.of Gr.Mumbai

Vs.

Kohinoor Ctnl Infrs.Co.P.Ltd.

SLP(Civil)No.33402 of 2012

(G.S.Singhvi and H.L.Gokhale,JJ.,)

25.07.2013

ORDER

G.S.Singhvi,J.,

Part-I

1. This petition is directed against order dated 9.7.2012 passed by the Division Bench of the Bombay High Court whereby Writ Petition No.143/2012 filed by the respondents was allowed and stop work notice dated 22.12.2011 issued by Executive Engineer (Building Proposal) City-III, Municipal Corporation of Greater Mumbai and order dated 27.4.2012 passed by the Additional Municipal Commissioner restricting the height of Wing 'C' of the buildings being constructed on Plot No.46 of Town Planning Scheme – III, N. Kelkar Road, Shivaji Park, Mumbai to ground and 4 upper floors were quashed.

2. The plans submitted by respondent No.1 for construction of Wings - 'A', 'B' and 'C' of the building were sanctioned by the competent authority of the Municipal Corporation of Greater Mumbai (for short, 'the Corporation') and Intimation of Disapproval was issued on 15.2.2006. After the Ministry of Environment and Forests, Government of India granted clearance for the construction of commercial building, the competent authority issued commencement certificate dated 13.9.2006. The Joint Commissioner of Police (Traffic) issued NOC dated 11.12.2009 for the development of a multi-storied public parking lot and vide letter dated 2.6.2010, the State Government granted in-principle approval under Clause 33(24) of the Development Control Regulations (DCR) for Greater Mumbai, 1991 for construction of a multi-storied public parking lot. Thereafter, the competent authority issued the Letter of Intent dated 27.7.2010.

3. During the construction of the building, the Urban Development Department of the State Government sent letter dated 4.3.2011 to the Municipal Commissioner requiring him to submit a proposal for amendment of Clause 33 (24) of the DCR for limiting the height of parking towers to 4 floors and also for revocation of all sanctioned proposals where the commencement certificates had not been issued. In view of that letter, the Corporation issued

circular dated 22.6.2011 prescribing certain conditions under Clause (iv) of DCR 33(24) and clarified that all proposals for public parking lots shall be considered subject to those conditions. The new conditions sought to limit the height of public parking to ground plus 4 upper floors and 2 basements.

4. As a sequel to the above changes, the Corporation issued notice dated 29.11.2011 to respondent No.1 under Section 51 of the Maharashtra Regional and Town Planning Act, 1966 requiring it to show cause as to why the commencement certificate may not be revoked. Respondent No.1 submitted detailed reply dated 14.12.2011 and pleaded that the amended DCR 33(24) cannot be made applicable to its buildings because substantial construction had already been made at a cost of Rs.167/- crores. Thereafter, the concerned Executive Engineer issued stop work notice dated 22.12.2011 and directed respondent No.1 to restrict the work of public parking to 4 floors instead of 13 floors. After about six months, Additional Municipal Commissioner passed order dated 27.4.2012, the relevant portion of which is extracted below:

> "As there is a substantial construction on core part of the plot, PPL done in this part shall be allowed to the extent of already executed construction as per report dated 27/12/2011. In the remaining portion of the plot, where there is no substantial construction, PPL shall be limited to G 4, Developer is to be asked to modify his plans in consonance with modified DCR."

5. The respondent challenged the stop work notice and the order of the Additional Municipal Commissioner in Writ Petition No.143/2012, which was allowed by the High Court in the following terms:

> "In the facts of this case, the admitted position as accepted in the order of the Additional Municipal Commissioner indicates that the work of development had substantially progressed by the time a notice to show cause was issued under Section 51 of the M.R. & T.P. Act, 1966. The impugned order passed by the Additional Municipal Commissioner restricting the Petitioners to a height of a ground floor and four upper floors in deviation of the permission granted earlier is therefore contrary to law. Hence, the impugned order would have to be quashed and set aside and is accordingly set aside. The stop work notice which has been issued to the Petitioners on the basis of the notice to show cause dated 29 November 2011 is to that extent quashed and set aside. Rule is made absolute in these terms. There shall be no order as to costs."

6. The special leave petition filed by the petitioners was taken up for admission hearing on 23.11.2012, on which date S/Shri F.S. Nariman, K.K. Venugopal, Dr. A.M. Singhvi, Shyam Divan and other learned counsel appeared on behalf of the respondents. During the course of arguments, Shri Harish N.Salve, learned senior counsel appearing for the petitioners made some suggestions. Thereupon, Shri F.S. Nariman, learned senior counsel appearing for respondent No.1 gave out that his assisting counsel will seek instructions. The case was then

adjourned to 10.12.2012 with liberty to the parties to file additional affidavits incorporating their respective suggestions and also produce copies of the sanctioned plans.

7. On the next date of hearing, i.e., 10.12.2012, this Court passed the following order:

> "We have heard learned counsel for the parties. The engineers of the Corporation and the respondents may hold a joint meeting, examine the plans prepared by the Corporation which have been filed before this Court and submit a report on the feasibility of providing ramp at the point suggested by the Corporation. List the case on 11.01.2013."

8. Further arguments were heard on 22.1.2013, 30.1.2013, 19.2.2013, 28.2.2013 and 11.4.2013. On 18.4.2013, learned senior counsel for the parties gave out that their clients have amicably settled the matter. Their instructing counsel also filed a Memorandum of Settlement along with an annexure duly signed by the representatives of the parties and their advocates.

9. Accordingly, the Memorandum of Settlement signed by the representatives of the parties and their advocates on 18.4.2013 together with the annexure are taken on record. We note that this settlement is arrived at on the backdrop of the facts and circumstances of this case. We clarify that we have not in anyway held the Municipal Circular dated 22.6.2011 to be bad in law. We direct that the parties shall strictly abide by the terms of settlement.

Part-II (A) The problem concerning reduction in the recreational area at the ground level:-

10. Having dealt with the actual controversy between the parties which led to this SLP, we deem it proper to take cognizance of a few important issues, which arose in the course of this proceeding concerning the impact of excessive construction and higher FSI on the urban environment. The concept of Floor Space Index (FSI) implies the buildable potential of a plot of land. The FSI to be allowed must take into consideration the availability of civic infrastructure including open spaces, transport facilities, requirements for protection against fire, and water supply and sewerage as well as electricity. An increase in FSI is likely to result into an increase in the density of population. FSI has an important bearing on the quality of urban life. A relaxation of FSI norms or, as the case may be, an enhancement of FSI by urban planners cannot be removed from the issue of adequacy, or as the case may be, inadequacy of civic services.

11. The requirement of keeping open spaces at the ground level should be read in this context. The recreational areas and greens in the multi- storied buildings have to be scrupulously safeguarded. The problem with the existing Municipal and Town Planning statutes is that they factor only two out of the three compelling needs. The first need is that of increasing housing stock – which is undeniable. The second need is that of keeping recreational areas for residents. The third entirely different and equally, if not more compelling, is the need to assess the sustainable capacity of the city and to balance the development with this capacity. The principle of sustainable development which has been

construed by this Court as an integral part of Article 21 of the Constitution deserves to be applied to town and urban planning throughout the country. This requires a thorough assessment of the environmentally sustainable capacity of every city/urban area. The preparation of Master Plan/Town Planning Schemes has to be made keeping in view the issue of sustainable capacity of the particular city/urban area.

12. Clause 23 of DCR for Greater Mumbai lays down the minimum requirement for providing the recreational ground. The area to be retained as recreational ground varies depending upon the size of the plot. The present position under the DCR is as follows:-
(i) Area from 1001 SQ.M. to 2500 SQ.M. 15 per cent (ii)Area from 2501 SQ.M. to 10,000 SQ.M. 20 per cent (iiiArea above 10,000 SQ.M. 25 per cent

13. In the present case, we find that as per the approved plan, the recreational space available at the ground level is only 7.7% of the area of the plot and respondent No.1 has accordingly raised construction. The respondents' plea, which appears to have been accepted by the Corporation, is that under DCR 38(34) the recreational area can be provided on the podium. We may add that since the petitioners and respondents have arrived at a settlement, we do not propose to go into this issue with respect to the construction of the respondent. We are, however, surprised that the Municipal Corporation did not look into the reduction in the recreational area at the ground level very seriously, probably because the rule permits recreational space on the podium. If this is treated as a correct interpretation, then it is quite possible that the recreational area left at the ground level could simply be zero. It may leave no space on the ground floor for the residents/occupants of the apartments constructed in the particular building, and that will have serious adverse impact on the right to life not only of the residents / occupants of the apartments but also of the people in the adjoining areas because all of them will have to only fall back on the public parks or play grounds and gardens for their minimum recreational requirements. When the cities are overcrowded, the roads are narrow and the traffic is increasing, the situation will be extremely hazardous for the children and senior citizens. There will be no greens in the buildings and the people will always crave for fresh and pure air. The buildings without greens will add to the ever increasing temperature of the overcrowded cities and urban areas. To put it differently, all constructions without adequate green and recreational areas will have serious impact on the environment and human life. If the recreational area is on 20th or 40th floor, the residents of the apartments may be able to access the same only through an elevator and that could never be a substitute for any such activity at the ground level. (B) The problem of impact on traffic:-

14. The next issue which came up during the discussion of this SLP was concerning the impact of the construction of high rise buildings in thickly populated areas on the traffic in the city. In the present case parking is proposed to be provided in the basements of the three buildings and in the ground floor plus 13 floors of building / tower C, wherein now as per the settlement between the parties, basement and ground plus 4 floors are to be reserved for public parking and the upper floors from 5th to 13th are reserved for the parking of the residents / occupants of the building concerned (called as captive parking). It is alright to say that parking is being provided for public purpose as well, but on that ground higher FSI is

granted to the developer. The object of the arrangement is not merely to provide space for public parking but also for the parking of vehicles by the residents of the high rise buildings, and then to get further FSI. Consequently, such high rise buildings bring along with them more number of vehicles of the occupants. Under DCR No.31 (1), the height of the building has to be in proportion to width of the road which is adjoining the building. Proviso to DCR 31 (1) lays down that construction schemes under certain DCRs bearing Nos.33 (7), 33 (8) and 33 (9) which relate to reconstruction / redevelopment of old buildings are exempted from application of DCR 31(1). The consequence is that the schemes of reconstruction bring along with them more population and more vehicles into an already congested area. The question is whether such exemption is justified, valid and legal?

15. The Municipal Corporation has prepared a document called "City Development Plan under Jawaharlal Nehru Urban Renewal Mission (JNNURM). The document sets out that for a population of 12 million, in an area of 437 Sq. Kms. there are only 753 parks with an area of 4.4 Sq.Kms. There is a vehicle population of 1.2 million with annual increase of 4 to 5%. 9.9 million people commute daily. The transportation system is plagued by inadequate capacity of the existing arterial roads, overriding surface of the roads, traffic bottle-necks and over burdened suburban rail system. The traffic density at peak hours is 6 to 8 kms. per hour. All these aspects will have to be kept in mind while examining the issues concerning recreational areas and traffic problems.

(C) The hazards arising out of non-compliance of fire safety standards:-

16. The third question which came up during deliberations was with respect to the hazards due to fire in such towers. There are provisions with respect to the space to be kept around such buildings for the movement of the fire-engines within the compound and within such building [DCR No.43 (1) 2]. There are also provisions with respect to sprinklers and other provisions in Appendix-VIII. The fire engines with their ladders available with the Municipal Corporation are reportedly not reaching anywhere beyond 14th floor. Even the fire which very recently engulfed the Secretariat Building of the State of Maharashtra (known as Mantralaya) took a few days to be controlled when the building has a height of 6 floors, and in which exercise a few persons unfortunately died. The issue of safety of the occupants of the high rise buildings, the residents in the neighbourhood and the firemen is equally important.

17. We are, therefore, of the view that following four issues require a consideration:-

> “1) What should be the correlation between DCR 23 and DCR 38 (34) regarding the recreational area? Is it permissible to reduce the minimum recreational area provided under DCR 23 on any ground?
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> 2) Whether the exemption from DCR 31 (1) under DCR Nos. 33 (7), 33 (8) and 33 (9) is justified, valid and legal particularly in the island city of Greater Mumbai? If so, to what extent and in which context?

3) What is the impact of the addition of FSI in the island city on the traffic situation? How can it be controlled?

4) Whether the present mechanism for protection against the fire hazards is adequate and is being implemented effectively? If not, what should be the mechanism for enforcement with respect to the provisions concerning the fire safety?"

18. We propose to examine these questions in the light of the statistics of the population in the island city of Mumbai, the availability of the roads therein, and the incidents of fire which have taken place in the island city. We will require the assistance of Municipal Corporation of Greater Mumbai and the State of Maharashtra for this purpose. These issues have become urgent particularly for the residents of island city which is not disputed by Mr. Harish Salve, learned senior counsel for the petitioners as well as Mr. Nariman, learned senior counsel appearing for the respondents. It is, therefore, that we feel that although the petitioners and respondents may be permitted to proceed with the settlement that they have arrived at, this SLP be kept alive so that Mr. Salve and Mr. Nariman can assist us on these issues in public interest.

19. We will also have to hear the State of Maharashtra. We would like to look into the aforesaid issues in the light of Constitutional provisions under Articles 14, 19, 21 and 48A. We would like the counsel for both these parties and the learned counsel appearing for the State of Maharashtra to help us arrive at early decision since the problem has become urgent and acute. They may as well suggest appropriate protective measures including prohibitory/guiding orders with respect to on going constructions.

20. A notice will be issued to the State of Maharashtra to file its response within 4 weeks hereafter. The Municipal Corporation and the respondents who are the builders are already before this Court. They are also directed to file their response within 4 weeks on the above referred four issues.

"(A). We direct the Municipal Corporation to file following affidavits on the above four issues:-

(i) The affidavit of the Chief Engineer, Town Planning on issues no.1 and 2.

(ii) The affidavit of the Chief Engineer, concerning traffic on issue no.3.

iii) The affidavit of the Chief Fire Officer on issue no.4.

(B). We direct the State of Maharashtra to cause affidavits to be filed on the above four issues.

(i) By the Secretary, Urban Development Department on issue nos. 1, 2 and 3 above.

(ii) By the Commissioner of Police (Traffic) on issue no. 3 above."

21. The SLP be notified for further hearing after 4 weeks.