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

WRIT PETITION NO.1152 OF 2002

Citispace and others .. Petitioners
Versus
State of Maharashtra and others .. Respondents

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Mr.Aspi Chinoy, Sr.Counsel with Mr.Shiraz Rustomjee, Senior Advocate, i/b Thakore Jariwala Associates for the Petitioners.
Mr.D.J.Khambata, Advocate General as Amicus Curiae.
Mrs.Madhubala Kajale, AGP for the State.
Mr.Janak Dwarkadas, Sr.Advocate with Mr.Shailesh Shah, Senior Advocate, with Mr.G.D. Uttangale and Mr.B.V.Phadnis i/b Utangale & Co. for SRA.
Ms.Yamuna Parekh for BMC.
Mr.P.K.Samdani, Sr.Advocat i/b Mr.B.G.Tripathi for applicant in NM No.194/14.
Ms.Smita Mhatre i/b L.C.Chogle for petitioner in WP No.200/12.
Mr.Prakash Shinde i/b MDP Partners for Slum Developer Association.

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CORAM: MOHIT S. SHAH, C.J. &
M.S.SONAK, J.
DATE : 25 JULY 2014

P.C.:

This writ petition has been filed by the NGO to save the open green spaces in the city of Mumbai. Since large areas of open spaces are encroached upon and slums have come up, open spaces are not actually available to citizens. In order to allow implementation of Slum Rehabilitation Schemes, the Government issued a Notification dated 3 June 1992 to provide that where slums have come up on lands which are reserved for green open spaces like play ground or recreation ground, 1/3rd of the land be

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used for the purpose for which the land is reserved, another 1/3rd of the land be used for constructing rehab tenements for the slum dwellers and remaining 1/3rd be permitted to be utilized by the developer for the constructing free-sale component.

2. This policy decision contained in the Government Notification dated 3 June 1992 has been challenged in the present petition, which is in the nature of public interest litigation.

By order dated 31 July 2002, this Court directed:

> *" Until further orders, no new rehabilitation scheme be sanctioned without the permission of this Court in respect of the open spaces which are reserved for gardens, parks, playgrounds, recreational spaces, maidans, no-development zones, pavements, roads and carriageways."*

The restrain order is, thus, in force for last 12 years.

3. At the last hearing of this writ petition, after hearing the learned counsel for the petitioner and the learned Advocate General, who was requested to assist the Court, this Court had suggested to the learned counsel for parties and the learned Advocate General to explore the possibility of resolving the deadlock which has been created. On the one hand, permitting the policy in the Government impugned Notification to be implemented would mean the citizens losing green open spaces, (which were reserved for gardens etc.) to the extent of 67%. On the other hand, in the present situation even 33% of the land is not available as open green spaces because the entire land is occupied by slum dwellers.

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4. *At the hearing today, Mr. Srivastav, the Secretary, Urban Development Department has submitted that the State Government would devise schemes / incentives in order to free up the encroached RG / PG open spaces, but that practical compulsions may make it difficult to completely exclude some extent of in situ rehabilitation.*

5. Having heard the learned counsel for parties and the learned Advocate General, we clarify that the interim order dated 31 July 2002 shall not come in the way of the State Government making any new scheme or evolving new policy in this behalf. However, any such policy or scheme shall not be implemented, unless it is placed on the record of this proceeding and for a period of four weeks from the date of placing the same on the record of this proceeding.

6. At this stage, Mr.Vimal Shah, the President of the Maharashtra Chamber Housing Industries submits that there are many slum rehabilitation scheme, which do not involve reduction in the area of open green space, but still the developers are required to move this Court for permission, where the playground or recreational area is required to be relocated. It is submitted that where no reduction in the area of green space is involved, the developer should not be required to approach this Court.

7. Apropos the above submission, Mr.Dwarkadas, learned

senior counsel for the SRA invites our attention to Regulation 11(4) of the Development Control Regulations (**DCR**) , which reads as under:-

> *11(4) Shifting and/or interchanging the purpose of designations/*reservations:—In the case of specific designations/reservations in the Development Plan, the Commissioner, with the consent of interested persons may shift, interchange the designation/reservation in the same or/on adjoining lands/building, to which an access is available or has to be provided and the same is not encumbered provided that the area of such designation/reservation is not reduced.

The learned counsel submits that in view of the above Regulation, SRA is ready to consider the application for permitting the developer to shift, interchange the designations/reservations in the same or/on adjoining lands/building to which an access is available or has to be provided and the same is not encumbered provided that the area of such designation/reservation is not reduced.

8. Mr.Chinoy, learned senior counsel for the petitioner, however, submits that in each case care has to be taken to see not only that area is not reduced but also that there is contiguity and public access to such open green space and that the petitioner should be heard every time, if any such permission is sought by the developer and the petitioner should get an opportunity to examine whether all safeguards are provided. It is submitted that if SRA is permitted to exercise powers under Regulation 11(4) of

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the DCR on its own, without any judicial intervention, the petitioner will not get any opportunity to object to any improper exercise of the power in an individual case.

9. Having heard learned counsel for parties, we are of the view that interests of justice would be served if it is directed, and it is accordingly directed that-

(i) When any developer approaches SRA under Regulation 11(4) of DCR, SRA shall take all the necessary undertakings, which are presently required to be given by the developer to this Court and shall also make the developer to provide all safeguards which are being imposed by this Court as conditions of the order. A copy of the application shall also be furnished to the petitioner and the petitioner will be permitted to have a site inspection and lodge its objections/suggestions, if any, to SRA, within a period of four weeks from the date of receipt of intimation from SRA/ developer. Original undertakings on affidavit shall be filed in the Registry of this Court and the same shall be placed on record of this proceeding.

(ii) If objections/suggestions which may be made by the petitioner are taken care of by the developer, there will be no need for any party to move this Court. But if SRA and/or the developer do not accept the objections/suggestions of the petitioner, then the developer shall move this Court by filing notice of motion in the present proceeding.

(iii) If the petitioner does not raise any objection to reallocation of the reserved land, SRA will grant permission under Regulation 11(4) to the developer, if all conditions of the said Regulation are fulfilled and if the developer gives all the undertakings and safeguards as aforesaid. There upon the interim order dated 31 July 2002 shall not come in the way of sanctioning the plan.

(iv) If the developer hands over vacant and peaceful possession of the reserved land to the Planning Authority , SRA will permit the developer to use the FSI for such reservation in accordance with the relevant Development Control Regulation and it will not be necessary for the developer to move this Court for modification of the interim order dated 31 July 2002.

We make it clear that the directions contained herein are confined to the applications under Regulation 11(4) of the DCR only in cases where the area of open green spaces is not going to be reduced, but request is going to be made only for relocation or realignment of such green spaces.

10. Stand over to 22 August 2014.

CHIEF JUSTICE

(M.S.SONAK, J.)

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