

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

WRIT PETITION NO.353 OF 2011

Mukesh M.Sanghvi
V/s

.. Petitioner

The Municipal Corporation of Gr.Mumbai & Ors.

.. Respondents

Mr.Mr.Milind Sathe, Senior Advocate i/by Ms.Reena Salunkhe for the petitioner.
Ms.Priti Purandare for the Respondents.

**CORAM: D.K.DESHMUKH &
R.G.KETKAR, JJ.**

DATE: 28th June, 2011

P.C:

1. Rule. Rule is made returnable forthwith and heard finally by consent of the parties. By this petition, the petitioner challenges the communication dated 20.04.2009 made by the Assistant Commissioner (Estates) of the Respondent Corporation.
2. The relevant facts are that the lease of the land was granted by the Corporation for a period of 999 years by a lease deed dated 25.10.1939 in favour of original lessee. Today the petitioner admittedly is the lessee of the said leasehold property. There was a building standing on the land. The terms of the lease provided that if during the term of lease the building

standing on the land is destroyed or damaged, it will be rebuilt, reinstated and repaired by the lessee.

3. The petitioner applied for redevelopment of the building on the said land to the Corporation under Regulation 33(7) of the Development Control Regulations. The Corporation, by a communication dated 15.05.2008 granted that permission to the petitioner subject to certain conditions. One of the conditions was that the petitioner should obtain “No Objection Certificate” from the Assistant Commissioner (Estates), and therefore, petitioner applied to the Assistant Commissioner (Estates) for his no objection. That application of the petitioner was considered by the Assistant Commissioner (Estates), and instead of granting or refusing to grant “No Objection Certificate” to the petitioner, the petitioner was informed “In this case it is informed that as per recent policy approved by Improvement Committee / Corporation vide Resolution No.130 and 96 of 15.10.2008 and 11.11.2008 respectively, the proposed redevelopment on lease property is change in terms and conditions of existing lease, hence the existing lease stands automatically cancelled. Therefore, fresh lease deed is required to be executed as per prevailing terms and conditions”. Thus by that communication lease granted in favour of the petitioner has itself been cancelled. The reason given is that the proposed redevelopment on the property amounts to change in the terms

and conditions of existing lease.

4. The learned counsel appearing for the petitioner submits that the reason given by the Corporation for cancelling the lease in favour of the petitioner that his proposal to redevelop the property amounts to change in the terms and conditions of the existing lease, suffers from total non-application of mind to the terms of the lease. He relied on clause 14 of the lease deed, which says “Whenever during the said terms the said buildings or any part thereof respectively shall be destroyed or damaged whether by fire or hurricane or by any other means forthwith to rebuild reinstate and repair the same in accordance with the plans and specifications approved by the Commissioner for the buildings destroyed or damaged under the direction and to the satisfaction of the Commissioner and the City Engineer and to continue to pay the rent hereby reserved as if no such destruction or damage by fire hurricane or otherwise had happened.”
5. It is submitted by the learned counsel appearing for the petitioner that the lease deed in terms contemplates rebuilding, reinstating and repairing of the buildings standing on the leasehold property. Learned counsel further submits, relying on the judgment of the Supreme Court in the case of **Jayant Achyut Sathe V/s. Joseph Bain D’Souza and Ors., delivered on 04.09.2008 in Civil Appeal No.2970 of 2006**, submits that in terms of Regulation No.

33(7) of the Development Control Regulations, the buildings which were standing on the land constructed before 1940 to which Development Control Regulation 33 (7) applies, are deemed to be in dilapidated condition.

6. We have heard learned counsel appearing for the Corporation. She submits that the Corporation is framing a policy in relation to grant of permission for redevelopment of buildings on the land of the Corporation, and therefore, the petitioner has not been granted permission. Perusal of the record however shows that the only reason that has been given in the impugned communication is that the proposed redevelopment on the land amounts to change in the terms and conditions of the existing lease. That reason obviously suffers from non-application of mind, because, clause 14 of the lease deed itself contemplates that the lessee will be redeveloping the building if it becomes dilapidated or is damaged.
7. In our opinion, therefore, the Corporation could not have cancelled the lease granted in favour of the petitioner. No other reason has been given by the Corporation for withholding the “No Objection Certificate” for which the petitioner has applied. The communication dated 20.04.2009 is therefore liable to be set aside.
8. Learned counsel for the petitioner has made a statement before us that the petitioner is willing to pay the additional ground rent, in case according to the

policy of the Corporation the petitioner is liable to pay additional ground rent in view of the proposed redevelopment. This statement is accepted.

9. In the result, therefore, in our opinion, following order would meet the ends of justice:

(i) The communication dated 20.04.2009 impugned in the petition is set aside.

(ii) The Assistant Commissioner (Estates) is directed to issue “No Objection Certificate” in favour of the petitioner as applied for, within a period of two weeks, subject to the aforesaid statement that is made by the petitioner with regard to payment of additional ground rent.

(iii) Rule is made absolute accordingly. Petition is disposed of. No order as to costs.

(R.G.KETKAR, J.)

(D.K.DESHMUKH, J.)