

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 9689-9690 OF 2013

ASHOK MURARI PATIL & ANR.

Appellant(s)

VERSUS

STATE OF MAHARASHTRA & ORS.

Respondent(s)

O R D E R

The appellants herein wanted to develop the property Collector Code No.52, Collector's New No. 434, old Survey No.557, New Survey Nos. 3 & 4 / 7911 and bearing Cadastral Survey No. 1331 of Girgaon Division, situated at Junction No. 198-200-200A, Raja Ram Mohan Roy Road and 273, Vithalbhai Patel Road, Girgaon, Mumbai - 4 as per the provisions of Development Control Regulations for Greater Mumbai, 1991 (herein after called 'DCR'). After purchasing the same from the tenants in accordance with the aforesaid DCR, they applied for the permission to develop the said property. The Chief Officer, M.B.R. & R Board, Mumbai, however, refused the permission by referring to modify DCR 33(9) as per which the minimum plot area prescribed for redevelopment is 4000 Sq. mts. He observed that in so far as the area of the aforesaid plot is concerned, it is less than 4000 sq. mts.

Challenging this action, the appellants herein filed

Writ Petition No. 1466 of 2011 in the High Court which has been dismissed accepting the stand taken by the Chief Officer as the area of the plot is less than 4000 sq. mts. and modified DCR 33(9) which stipulates minimum plot area for redevelopment is 4000 sq. mts. It is this order dated 15.11.2011 passed by the High Court dismissing the writ petition which is under challenge in the present appeals.

During the pendency of these appeals, the appellants have filed IA Nos. 8-9 of 2014. In these I.A.s, the interim prayer for reconstruction of the building on the property in question is made submitting that the appellants may at least be permitted to amend the approved plan to the extent of consume FSI i.e. the same old area which the tenant and owners were using as certified by MHADA and all lawful benefit thereunder.

At the time of arguments, Mr. Pratap Tripathi, learned senior counsel appearing for the appellants submitted that the appellants would not be pressing the prayer for a grant of permission to develop the said plot as the developer under DCR 33(9) sought. He says that the prayer made in the IA Nos. 8-9 may be granted as the appellants would be satisfied with this.

Mr. Pratap Tripathi, learned senior counsel has drawn

our attention to DCR 33(6) which reads as under:

"33. Additional Floor Space Index which may be allowed in certain categories

(6) Reconstruction of buildings destroyed by fire which have collapsed or which have been demolished etc.- Reconstruction in whole or in part of a building (not being a building wholly occupied by warehousing user and also not being a ground floor structure), which existed on or after 10th June, 1977 which has ceased to exist in consequence of an accidental fire, natural collapse or demolition for the reason of the same having been declared unsafe by or under a lawful order of the Corporation or the Bombay Housing and Area Development Board or is likely to be demolished for the reason of the same having been declared unsafe by or under a lawful order of the said Corporation or the said Board and duly certified by them, shall be allowed with an FSI in the new building not exceeding that of the original building (or the FSI permissible under these Regulations, whichever is more). This FSI will be subject to the Regulations in the Appendix II hereto."

On that basis, it is submitted that the aforesaid DCR would be applicable even if the property is not to be developed, it is the right of the appellants - the owners of the plot to reconstruct the building on the vacant plot. The appellants should be allowed to construct the said plot with an FSI not exceeding that of the original building (or the FSI permissible under these Regulations, whichever is more).

It is not in dispute that for reconstruction of the building, the appellants shall have to submit revised plans

for sanction by the competent authority. While submitting these plans, it would be open to the appellants to bring to the notice of the competent authority the aforesaid provisions contained in the DCR 33(6) and we expect the authorities to grant the sanction in accordance with the said DCR 33(6).

The appeals stand disposed of with no order as to costs.

.....J.
[A.K. SIKRI]

.....J.
[UDAY UMESH LALIT]

NEW DELHI
MAY 19, 2015

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 9689-9690/2013

ASHOK MURARI PATIL & ANR.

Appellant(s)

VERSUS

STATE OF MAHARASHTRA & ORS.

Respondent(s)

(With application for directions and permission to file additional documents and office report)

Date : 19/05/2015 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Appellant(s)

Mr. Parag Tripathi, Sr. Adv.
Mr. Aman Vachher, Adv.
Mr. Ashutosh Dubey, Adv.
Mr. Harsh Sharma, Adv.
Mr. Abhishek Chauhan, Adv.
Mr. Ashok Rawal, Adv.
Mr. M. Mridul, Adv.
Mr. P. N. Puri, Adv.

For Respondent(s)

Mr. Nishant R. Katneshwarkar, Adv.

Mr. Chirag M. Shroff, Adv.
Ms. Swati V., Adv.
Mr. Vikash Sinha, Adv.

Mr. Atul Yeshwant Chitale, Sr. Adv.
Ms. Jayati Chitale, Adv.
Mrs. Suchitra Atul Chitale, Adv.

Ms. Asha Gopalan Nair, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeals stand disposed of in terms of the
signed order.

I.A.8-9 of 2014 stand disposed of in terms of
the signed order.

(MEENAKSHI KOHLI)
COURT MASTER

(SUMAN JAIN)
COURT MASTER

[Signed Order is placed on the file]