



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2591 OF 2017
ALONG WITH
INTERIM APPLICATION (LODGING) NO. 29053 OF 2022

Rashmi Developments Pvt. Ltd. ... Petitioner-Applicant

V/s.

Municipal Corporation of Greater ... Respondents
Mumbai and 2 Ors.

Mr. Mukesh Vashi, Senior Advocate a/w. Ms. Manisha Desai i/by M.P. Vashi Associates for Petitioner.

Mr. A.Y. Sakhare, Senior advocate a/w Mr. Anoop Patil and Ms. Pooja Yadav i/by Mr. S.K. Sonawane for MCGM.

Mr. S.P. Bharati for respondent no.3.

Mr. Milind More-Additional Government Pleader for State.

**CORAM : SUNIL B. SHUKRE &
M.W. CHANDWANI, J.J.**

DATE : 23rd JANUARY 2023.

ORAL JUDGMENT : (PER SUNIL B. SHUKRE, J.)

1. Heard.

2. Rule. Rule made returnable forthwith. Heard finally with the assistance of learned Senior Advocate appearing for the petitioner and for the Corporation.

3. We have carefully gone through the impugned order and also order passed by the Supreme Court on 12th July 2022, quashing and setting aside the judgment and order passed by this Court dated 8th January 2018 and remanding the matter back to this Court for decision afresh.

4. The project of Floatel (floating hotel) proposed by the petitioner comprises four parts, namely, waiting area, floating jetty, parking area and floatel itself. The waiting area consists of a seating lounge, pantry along with service area, ticketing area, security check facilities and toilets/wash rooms. The floating jetty consists of Gangway and has length of about 22 metres and width of about 1.2 metres and main walkway has length of about 100 metres and width of about 4 metres and the parking area of about 5000 sq.metres approximately. The floating hotel is going to be located in deep sea about 2 nautical miles from the shore line.

5. It is the contention of the petitioner that none of these four parts of the entire project is situated anywhere near or on the Marine Drive promenade and that these parts are situated beyond a point which is the end of the Marine Drive promenade. He submits that this aspect of the matter was not considered in any way by the Three Member Committee, which took the impugned decision dated 24th May 2017.

6. Learned senior counsel for the Corporation submits that the Three Member Committee took the decision in accordance with the

directions issued by the High Court in Public Interest Litigation (Lodging) No. 96 of 2015, in which, by the order passed on 6th August 2015, the High Court, having regard to the unique nature of Marine Drive promenade and its proximity to Marine Drive Heritage Precincts, directed that the decision in any matter pertaining to Marine Drive promenade has to be taken by the Municipal Corporation for Greater Mumbai only after the committee constituted by the Court considers the application for grant of permission and recommends granting of such permission. He further points out that, by the same order, the High Court constituted Three Member Committee, as mentioned in Paragraph 3 of the order dated 6th August 2015. Therefore, according to him, no fault should be found with the findings recorded by the Three Member Committee regarding it having jurisdiction in the matter.

7. Considering the situation of each of these four parts of the entire project of Floatel, we find substance in the submission of learned senior Advocate for the petitioner. As pointed out by learned senior Advocate for the petitioner, none of these parts appear to be, *prima facie*, forming part of Marine Drive promenade and this can be seen from the admitted position on the situation of the areas covering the project, as for example, parking area comprising about 5000 sq.metres has already been allotted by the MMRDA to the petitioner and it is not part of the promenade. It appears that starting point of floating jetty is from the land bearing Survey No. 220/A not forming part of the promenade and even the proposed waiting area appears to be on piece

of land, which is not forming part of the Marine Drive promenade.

8. In these circumstances, it would be necessary for the Commissioner of Mumbai Municipal Corporation to first take decision as to whether he has exclusive jurisdiction to decide the application of the petitioner for grant of NOC or not and if he decides that he has such jurisdiction in the matter, he would have to go ahead to consider the application of the petitioner on its own merits, without being influenced by the order passed by this Court and also order passed by the Three Member Committee on 24th May 2017. However, if the Commissioner comes to the conclusion that he has no exclusive jurisdiction in the matter, he would have to act upon the recommendation of the Three Member Committee and then in that case, he would have to refer the matter to the Three Member Committee for its consideration and appropriate recommendations. Recording of finding on the question of jurisdiction is important for the reason that it goes to the root of the whole dispute.

9. In this view of the matter, we find that the impugned order dated 24th May 2017 will not stand to the scrutiny of law and will have to be quashed and set aside.

10. As regards, the other impugned order 30th January 2017, whereby NOC was refused by the Deputy Commissioner of Police, Zone-I, Mumbai, which has been challenged here, we find that this order contradicts the order passed earlier by the Deputy Commissioner of Police, Harbour Zone, Mumbai dated 13th April 2011. The

order/communication dated 30th January 2017 is based upon the objection taken by the Senior Police Inspector, Marine Drive Police Station and also Assistant Commissioner of Police, Colaba Division, Mumbai. We are of the view that neither Senior P.I., Marine Drive Police Station, nor Assistant Commissioner of Police, Colaba Division, Mumbai had any jurisdiction in the matter. The project involved in the petition had already received green signal from the police authorities having the jurisdiction and therefore the impugned order/communication dated 30th January 2017, based upon the objection taken by the authority having no jurisdiction in the matter, cannot be sustained in law. The authority which is having jurisdiction in the matter, i.e. Deputy Commissioner of Police, Mumbai had already granted permission for the subject project vide its communication dated 13th April 2011. There is another communication dated 9th June 2016 of the Deputy Commissioner of Police, Head Office-1, MCGM granting permission for implementing the Floatel project and carrying out incidental activities. This permission, granted on 9th June 2016, would in particular, nullify the subsequent objection taken by the subordinate officer of the Commissioner of Mumbai Police. Therefore, the impugned order/communication dated 30st January 2017 also deserves to be quashed and set aside.

11. In the result, the petition is allowed. Impugned order dated 24th May 2017 and impugned communication dated 30th January 2017, both are hereby quashed and set aside. The matter is remanded back to the respondent no.1 with a direction to the Commissioner of

Mumbai Municipal Corporation that he shall take his decision first on the question of having jurisdiction in the matter. If he finds that he has jurisdiction in the matter, he shall consider the application of the petitioner for grant of necessary permission in accordance with law and, if required, he may call for the NOC from the respondent.

12. In case the Commissioner has no exclusive jurisdiction in the matter, he shall refer the application of the petitioner for grant of permission to Three Member Committee constituted in terms of order of the High Court dated 6th August 2015 in Public Interest Litigation (lodging) No. 95 of 2015 for its due consideration and appropriate recommendations in the matter.

13. We further direct that the Commissioner of Municipal Corporation shall take his final decision in the matter in accordance with law within a period of four weeks from the date of his decision having exclusive jurisdiction or receipt of recommendations from the Three Member Committee, as the case may be.

14. We also direct the petitioner to submit to the Commissioner of Municipal Corporation a complete set of documents and comprehensive representations and necessary documents within a period of two weeks from the date of the order.

15. The entire process shall be completed by the Commissioner of Municipal Corporation within a period of eight weeks from the date of receipt of complete set of documents and comprehensive

representation from the petitioner.

16. Rule is made absolute accordingly. The petition is disposed of with the above terms.

17. Interim application is disposed of as per final order.

(M.W. CHANDWANI, J)

(SUNIL B. SHUKRE, J)