

ITEM NO.2

COURT NO.4

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s).13546/2015

NIKUNJ DEVELOPERS AND NOW KNOWN
AS M/S VEENA DEVELOPERS

Appellant(s)

VERSUS

VIDEOCON TOWER A CO-OPERATIVE
HOUSING SOCIETY LTD. & OTHERS

Respondent(s)

(WITH IA No. 3/2015 - PERMISSION TO FILE ANNEXURES, IA No. 1/2015 -
STAY APPLICATION)

Date : 26-07-2022 These matters were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE SURYA KANT

For Appellant(s)

Mr. C. A. Sundaram, Sr. Adv.
Mr. Aman Vaccher, Adv.
Mr. Yadunath Chaudhary, Adv.
Mr. Dhiraj, Adv.
Mr. Ashutosh Dubey, Adv.
Mrs. Anshu Vachher, Adv.
Mr. Abhishek Chauhan, Adv.
Mr. P. N. Puri, AOR

For Respondent(s)

Ms. Sumedharao, Adv.
Mr. Sudhanshu S. Choudhari, AOR
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Ms. Rucha A. Pande, Adv.

Mr. Rahul Chitnis, Adv.
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Mr. Geo Joseph, Adv.
Ms. Shwetal Shepal, Adv.

Mr. Atmaram NS Nadkani, Sr. Adv.
Mr. Ashish Wad, Adv.
Mr. Harshad Pimple, Adv.
Mr. Sidharth Mahajan, Adv.
Ms. Sukriti Jaggi, Adv.
Mr. Ayush P. Shah, Adv.
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Mr. Adiraj Bali, Adv.

**Mr. Santosh Salvador Rebello, Adv.
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Mr. Uday B. Dube, AOR

Mr. Dilip Annasaheb Taur, AOR

**Mr. Mukesh Verma, Adv.
Mr. Pankaj Kumar Singh, Adv.
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**Mr. Sangram Singh R. Bhonsle, Adv.
Ms. Samridhi S. Jain, Adv.
Ms. Pushkara A. Bhonsle, Adv.
Mr. Aman Varma, AOR**

Mr. Sandeep Sudhakar Deshmukh, AOR

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

1 By an order of this Court dated 17 February 2022, the following directions were issued

"2 ...

- (i) Within a period of two weeks, the appellant shall submit a proposal to the Municipal Corporation of Greater Mumbai for sanctioning of 227 car parking spaces, inclusive of the 25% discretionary quota of the Municipal Commissioner;
- (ii) The Municipal Corporation of Greater Mumbai shall consider the proposal in accordance with the Development Control Rules, as applicable, and take a decision thereon within a period of one month;
- (iii) The appellant shall, upon the sanctioning of the proposal, take necessary steps for compliance so as to assuage the grievance of the cooperative societies in regard to the absence of car parking spaces; and 3
- (iv) In addition to the submission of the proposal for 227 car parking spaces in terms of (i) above, the appellant shall submit, within a period of two weeks, an additional proposal for sanctioning of 124 car parking spaces (thus, making a total of 351 car parking spaces). It is clarified that the additional proposal shall be at the

cost and expense of the appellant by purchasing such FSI as may be permissible in law. The proposal shall be evaluated by the Municipal Corporation of Greater Mumbai in terms of the applicable Development Control Rules and a final decision shall be taken thereon which shall be placed on the record of these proceedings.”

- 2 The above directions have not been complied with. The directions envisage that the appellant was required to submit: (i) a proposal to the Municipal Corporation of Greater Mumbai¹ for sanctioning 227 car parking spaces, inclusive of the 25% discretionary quota of the Municipal Commissioner; and (ii) in addition to the above proposal, a proposal for sanctioning 124 car parking spaces for which the appellant was required to purchase FSI as permissible in law.
- 3 Despite the passage of nearly five months, the appellant has failed to comply with the order of this Court. *Prima facie*, the appellant is dragging its feet in complying with the directions and is, therefore, answerable to the coercive arm of law. The above order was passed after hearing the parties and the appellant can, therefore, have no grievance in that regard.
- 4 The Municipal Corporation has filed an affidavit of its Executive Engineer dated 28 April 2022. The Municipal Corporation has raised an objection on the ground that several flats in the building were amalgamated and that for the regularization of the amalgamated flats, the NOC of the Government of Maharashtra under the Urban Land Ceiling Department would be required. The Municipal Corporation has also stated that there would be an application for revised car parking space after considering the area of the amalgamated flats and an NOC of the cooperative societies would be a pre-requisite since the parking spaces are proposed as mechanized parking over the approved service parking in the open spaces of the building.

1 “Municipal Corporation”

- 5 Ms Sumedha Rao, counsel appearing on behalf of the first respondent, has drawn the attention of the Court to the fact that notices were issued by the Municipal Corporation in the matter of the amalgamation of flats well over a decade after the grant of occupation certificate. They form the subject matter of pending proceedings before the High Court in Writ Petition No 811 of 2014. On 24 July 2017, a Division Bench of the High Court, while admitting the petition instituted by the first respondent to these proceedings granted interim relief to the effect that no action shall be taken on the notices issued by the Municipal Corporation, subject to the filing of an undertaking that any member of the society proposing to transfer a flat would give notice of the pending proceedings to the transferees.
- 6 In view of the above interim order of the High Court, the Municipal Corporation would not be justified, at this stage, in raising the issue of amalgamation, pending the decision of the High Court.
- 7 The effect of the appellant-developer to raise the bogey of amalgamation is misplaced. The developer, on the one hand, and the Municipal Corporation, on the other hand, are raising the issue of amalgamation before this Court to somehow evade compliance with their respective obligations in terms of the order dated 17 February 2022.
- 8 In order to ensure that the previous order is duly complied with, we issue the following peremptory directions:
- (i) The appellant - developer shall, within a period of two weeks from the date of this order, submit separate proposals in terms of paragraph 2(i) and paragraph 2(iv) of the order dated 17 February 2022 for (a) the sanctioning of 227 car parking spaces (inclusive of the 25% of the discretionary quota of the Municipal Commissioner); and (b) for

sanctioning 124 car parking spaces for which the appellant shall purchase such FSI as is required;

- (ii) The Municipal Corporation shall, within a period of three weeks of the submission of the application, intimate to the appellant the extent of FSI which is required to be purchased for the additional proposal for sanctioning 124 car parking spaces and upon such intimation being made, the appellant shall, within a period of four weeks thereafter, deposit the amount with the Municipal Corporation, as directed;
- (iii) In view of the interim order of the Bombay High Court dated 24 July 2017, the Municipal Corporation shall not raise the issue of amalgamation, at the present stage, which shall abide by the result of the proceedings before the High Court.
- (iv) The appellant shall submit the proposal for the construction of a building for accommodating the car parking spaces, as envisaged in the environmental clearance issued by the Government of Maharashtra;
- (v) The Municipal Corporation shall, while sanctioning the proposal, proceed on the basis of the provisions as they existed on the date of the grant of the environmental clearance by the Government of Maharashtra;
- (vi) The proposal to be submitted by the appellant shall include plans and specifications under the signature of a certified architect and the appellant and shall comply with all the requisitions which have been communicated by the Municipal Corporation to the appellant, as set out in the affidavit filed in these proceedings by the Executive Engineer; and

(vii) The Municipal Corporation shall issue orders on the proposal submitted by the appellant, within a period of one month from the date of the final submission.

9 List the proceedings on 18 October 2022.

(SANJAY KUMAR-I)
DEPUTY REGISTRAR

(SAROJ KUMARI GAUR)
COURT MASTER