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

PUBLIC INTEREST LITIGATION NO. 80 OF 2019

Abha Singh ...Petitioner

V/s.

State of Maharashtra, through
The Secretary Urban Development
Department & Ors. ...Respondents

Mr. Aditya Pratap for the petitioner.
Mr. Hiten Venegaonkar, Additional Government Pleader for
respondent no. 1/State.

**CORAM: DIPANKAR DATTA, CJ &
M. G. SEWLIKAR, J.**

DATE: APRIL 11, 2022

P.C.:

- 1.** Reply-affidavit filed by the State and the rejoinder-affidavit thereto of the petitioner are taken on record.
- 2.** The order dated 7th March 2022 passed by a coordinate Bench of this Court on this writ petition encapsulates the concern expressed by the petitioner and the events subsequent to institution of such writ petition.
- 3.** By instituting this public interest litigation, the petitioner has brought to the notice of this Court the failure and/or omission on the part of the State Government in the Urban Development Department to finalize the Special Regulations for Building Vulnerable to Manmade Disasters. Pertinently, the draft regulations vide notice dated 27th February 2009 came to be circulated inviting suggestions and/or objections from

the members of the public; however, no further step was taken to take the draft regulations to its logical conclusion.

4. The petitioner, a public-spirited resident, submitted a representation on 15th January 2018 seeking that appropriate steps be taken for issuance of the final notification. On 27th February 2018, the Under Secretary to the Government of Maharashtra in the Urban Development Department assured the petitioner of appropriate action being taken as per merits, yet, till 20th March 2018 when the public interest litigation came to be presented before this Court seeking direction on the Government of Maharashtra to issue the final notification, nothing positive was heard by the petitioner from the side of the Government.

5. Having noted the failure and/or omission on the part of the Government to take appropriate steps in the matter, we called upon the State to file an affidavit-in-reply. An affidavit affirmed by Mr. Shrikant M. Deshmukh, Deputy Director of Town Planning, Greater Mumbai on 23rd March 2022 has been placed before us which we have read.

6. The affidavit refers to constitution of an expert committee on 11th November 2008 to prepare the Security Control rules and regulations pertaining to security of buildings in the light of man-made disasters. A report came to be submitted consisting of special regulations, which was duly accepted. Thereafter, notice under section 37(1AA) of the Maharashtra Regional & Town Planning Act, 1966 (hereafter "MRTP Act", for short) was issued on 27th February 2009 inviting suggestions and/or objections. To follow the legal procedure under section 37 of the MRTP Act, the concerned

Divisional Deputy Director of Town Planning and Deputy Director, Town Planning, Greater Mumbai were appointed as an 'officer' under section 162 of the MRTP Act to exercise the jurisdiction referred to in the relevant notification. The appointed officer completed the entire process and submitted his report on 20th May 2009 to the State Government through the Director of Town Planning, Maharashtra State, Pune. Upon receipt of such report, the Director of Town Planning placed its opinion before the State Government for final approval to the following effect.

"Upon considering the objections and suggestions received in respect of special security control rules and regulations, this directorate is of the opinion that, the State Government should give final approval for any change or modification only after verifying whether, the security control rules and regulations can actually provide any security from the terrorist attack?"

7. Very conveniently, the date of the opinion of the Director of Town Planning has been omitted in the affidavit. The following paragraph, i.e., paragraph 6, advances the time line to 2018 without indicating what happened in the meanwhile. It is pleaded that the Development Control and Planning Regulations-2034 (hereafter "DCPR-2034", for short) were approved on 8th May 2018 for the Mumbai Municipal Corporation jurisdiction by the State Government and the same came into effect from 1st September 2018. It is also pleaded that in view of approval accorded by the Government on 2nd December 2020, the Unified Development Control and Planning Regulations (hereafter "UDCPR", for short) came into effect on 3rd December 2020. In view thereof, it was felt by the State that it would not be desirable and lawful to make

any changes or modifications to the Development Control Regulations which were in force in 2009 and which ceases to exist on the date the affidavit has been affirmed, on the basis of the decision taken in the year 2009.

8. We need to pause here for a moment and make a comment. Interestingly, why it was not considered appropriate to include the Special Regulations in the DCPR-2034 as well as in the UDCPR, which are subsequent pieces of subordinate legislation having come into effect in 2018 and 2020, respectively, has not been explained by the State. We need to remind the State Government that since it was contemplating introduction of the Special Regulations in the Development Control Regulations of 2009, it ought to have endeavoured to include the Special Regulations for buildings that become vulnerable due to man-made disasters in the DCPR-2034 and the UDCPR. The apathy and indifference of the State in so introducing is telling.

9. Be that as it may, it is further stated in the affidavit that the State intends to appoint a fresh expert committee for the purpose of ascertaining, based on advancements made in the field of science and technology, as to whether it is at all necessary to introduce the Special Regulations for buildings vulnerable to man-made disasters in the DCPR-2034 as well as the UDCPR suitable for the present situation.

10. The affidavit then proceeds to explain why since 2012 no decision could be taken. It refers to an incident of a fire at Mantralaya due to which all documents pertaining to 2009 in connection with the relevant subject matter got destroyed and the issue could not be addressed. According to the State,

there has been no deliberate omission on its part to address these but because of the destruction of the records by reason of the incident of fire, the issue never came up for consideration and remained unaddressed.

11. We are constrained to observe that this is one other case where the State Government has utterly failed to justify its complete inaction. Notwithstanding the incident of fire at the Mantralaya, the State Government did not find it inconvenient or difficult to frame the DCPR-2034 as well as the UDCPR. The National Building Code of India (hereafter "the Code", for short) in its revised form is in existence since 2005. The fire prevention stipulations in the Code provide for maintaining large open spaces around the building. If indeed the State Government was desirous of following the legal provisions, nothing prevented it from incorporating the stipulations in the Code for compliance by inserting the same in the DCPR-2034 and the UDCPR. Unfortunately, a complete abdication of public duties and functions is discernible, which is wholly opposed to public interest and public concern.

12. We need to activate the Urban Development Department, Government of Maharashtra, to explore the desirability of incorporating the Special Regulations as and by way of amendment in the DCPR-2034 as well as the UDCPR. Let appropriate study and research be conducted by the relevant department of the State Government with the help of experts and all steps following the provisions of law may be taken to include the stipulations of the Code in the DCPR-2034 and the UDCPR for ensuring public safety and security.

13. The PIL petition shall be listed on **18th July 2022, (first on board)**, to enable Mr. Venegaonkar, learned advocate for the State, to report developments.

(M. G. SEWLIKAR, J.)

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(CHIEF JUSTICE)