



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

WRIT PETITION (L) NO. 11686 OF 2023

R Mall Developers Pvt. Ltd. & Anr. ... Petitioners

Versus

The Municipal Corporation of Greater Mumbai, ... Respondents
through its legal department & Ors.

Mr. Mayur Khandeparkar a/w. Mr. Saket Mone and Mr. Devansh Shah
i/b. Vidhii Partners for the petitioner.

Ms. Pooja Yadav for the respondent/MCGM.

Mr. Vishal Mhaiskar, AE(B&F), Mr. Abhijeet Bhalerao. SE(B&F), N
Ward, Mr. Sandeep Kolhe, AE (BP) and Mr. Suyash Balip, SE(BP), N
Ward present.

CORAM: G. S. KULKARNI
& R.N. LADDHA, JJ.
DATED: 26 April, 2023

ORAL ORDER (Per G.S.Kulkarni, J.)

1. The petitioner has filed this petition, being aggrieved by the communication dated 18 April, 2023 issued by respondent no. 2-Assistant Engineer (Building and Factory)-II 'N' Ward, whereby the petitioners application for NOC for temporary "ice-cream fest" to be held by the petitioners at the Courtyard/ open space, of the petitioners 'R City Mall', Ghatkopar from 28 April, 2023 to 30 April, 2023 has been rejected, primarily on the ground that such activity to be undertaken by the petitioners is a commercial activity not permissible at the recreational/open space of the said mall.

2. The impugned letter as addressed by the Assistant Engineer (B & F)-II 'N' Ward also incorporates a reference to the earlier communication dated 15 February, 2023 of the MCGM, addressed to the petitioner, which refers to complaint of one Mr. Mayur Shah, stating that recreation area is a free area meant for recreational purpose only, hence, such commercial activity cannot be carried out in the said area. Such contention of Mr. Mayur Shah was accepted by the Executive Engineer (Building Proposal) Eastern Suburban-II, to be the correct position under Regulation 27 of Development Control and Promotion Regulations for Greater Mumbai, 2034 (for short "DCPR 2034").

3. Thus, the question which calls for consideration is as to whether the Municipal Corporation through its designated officer is correct in applying the provisions of Regulation 27 and more particularly Regulation 27(1)(g)(ii) in not permitting recreational activity of the nature as proposed by the petitioners.

4. To consider the question, Regulation 27(1)(g)(ii) of the DCPR 2034 needs to be noted which reads thus:

"27. Layout/Plot Recreational Ground/Open Spaces (LOS) in Layout/Plan

(1) LOS in residential and commercial layouts

(g) Structures/uses permitted in LOS

(i)

(ii) In a LOS of 1000 sq. m or more in area (in one piece and in one place), structures for pavilions, gymnasia, club houses, swimming pools and other structures for the purpose of sports and recreation activities may be permitted with BUA not exceeding 15 per cent of the total required LOS. The area of the plinth of such a structure shall be

restricted to 10 per cent of the area of the total required LOS in these regulations. The total height of any such structure, which may be Ground + one storey shall not exceed 8 m. The height may be increased to 13 m to accommodate badminton court/squash court. Where club house is proposed in LOS, then provision for gymnasium/fitness centre/yogalaya in club house shall be insisted upon. Structures for such sports and recreation activities shall conform to the following requirements: -

(a) The ownership of such structures and other appurtenant users shall vest, by provision in a deed of conveyance, in all the owners on account of whose cumulative holdings the LOS is required to be kept as LOS, in the layout or sub-division/amalgamation/plot of the land.

(b) The proposal for construction of such structure should come as a proposal from the owner/owners/society/societies or federation of societies shall be meant for the beneficial use of the owner/owners/members of such society/societies/federation of societies.

(c) Such structures shall not be used for any other purpose, except for recreational activities.

(d) The remaining area of the LOS shall be kept open to sky and accessible to all members as a place of recreation.

(e) The owner/owners/or society or societies or federation of the societies shall submit to the Commissioner a registered undertaking agreeing to the conditions in (a) to (d) above.

(f) LOS in a private layout shall be for the exclusive use of the residents of such private layout only and shall not be subjected to acquisition by MCGM/Appropriate Authority. Further in such cases area of existing Recreational Open Space shall have to be maintained by residents of such private layout.”

(emphasis supplied)

5. We have heard Mr. Khandeparkar, learned counsel for the petitioner and Ms. Yadav, learned counsel for the Municipal Corporation.

6. Having perused Regulation 27 and more particularly sub clause (1)(g)(ii), we do not notice any restriction/embargo for the recreation area in the petitioner's mall to be used for the purpose for which the petitioner has made the application in question, to the MCGM. Admittedly, the activity to be undertaken by the petitioners is for a limited period of about three days, by installation of temporary stalls. The Regulation in fact clearly permits "recreational activities", as can be clearly noticed from Clause (1)(g)(ii). No restriction as to any temporary commercial activity has been provided in Regulation 27(g)(ii), hence, the same cannot be read in Regulation 27 as sought to be interpreted by the Municipal Corporation. This more particularly when there is no definition of "recreational activities", under the DCPR 2034. In the absence of such definition, ordinary and natural meaning is required to be given to the words "recreational activities".

7. The word "recreation" has been defined in Webster's Third New International Dictionary as under:-

'equipped so as to provide diversion or amusements'

The Concise Oxford English Dictionary would define recreation as '*enjoyable leisure activity*'.

8. It is thus clear that recreational activities would include amusement or enjoyment-related leisure activities. It needs no elaboration that citizens visit malls not only for the purpose of shopping but also, for leisure or for amusement, which they would derive not only from shopping activities but also, from visiting different specialized areas created in such malls like the food area, play area, amusement/cinema, etc. In such context, there is nothing objectionable and irregular if such malls utilize open spaces for organizing such limited festival for the leisure, amusement and/or enjoyment of visitors of the mall. It is in such manner Regulation 27 would be required to be understood.

9. In the light of the above discussion, we would be at a loss to comprehend, as to how the Municipal Corporation in the absence of any specific restriction under Regulation 27 can interpret Regulation 27 to read any restriction of such nature when such restriction is neither explicit nor by implication derived from the plain language of such regulation.

10. We are also informed that to have such activity, stalls would be installed by persons who are already having permanent licensed premises for selling such items inside the petitioners mall. Thus, it is not the case that some temporary unregulated commercial activity is being undertaken by the petitioners. In other words, it is only an activity where the visitors of the mall would enjoy the benefit of a variety of edibles at a common open space, which,

in our opinion, is a permissible recreational activity within the meaning of Regulation 27.

11. As noted above such activities are intended to the benefit of the public at large, and more particularly in the city like Mumbai when large segment of the population would be interested to take benefit of such events, being organized in the public places like malls where open areas are available. Certainly such temporary activity subject to any other compliances is required to be permitted, so that the open spaces can also be utilized, as permissible under Regulation 27(1)(g)(ii).

12. When confronted with all these issues, Ms. Yadav, learned counsel for the Municipal Corporation, on instructions from the officers who are present in the Court, fairly states that the Municipal Corporation would issue the permission/NOC as applied by the petitioners.

13. We are of the clear opinion that the Municipal Corporation needs to grant such permission to the petitioners. We, accordingly, direct the Municipal Corporation to grant appropriate NOC/permission to the petitioners during the course of the day. The permission shall remain valid as per the application of the petitioners.

14. The petition stands disposed of in the above terms. No costs.

(R.N. LADDHA, J.)

(G. S. KULKARNI, J.)