

**REVISED****ITEM NO.9****COURT NO.11****SECTION IX****S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS****Petition(s) for Special Leave to Appeal (C) No(s).9044/2019****(Arising out of impugned final judgment and order dated 19-10-2018  
in PIL No. 48/2016 passed by the High Court Of Judicature At  
Bombay)****NORMANDIE CO OPERATIVE HOUSING SOCIETY LIMITED & ORS. Petitioner(s)****VERSUS****THE STATE OF MAHARASHTRA & ORS. Respondent(s)  
(With application for permission to file additional documents)****Date : 14-01-2020 This petition was called on for hearing today.****CORAM :****HON'BLE MR. JUSTICE L. NAGESWARA RAO  
HON'BLE MR. JUSTICE HEMANT GUPTA****For Petitioner(s) Mr. J.P.Cama, Sr. Adv.  
Ms. Divya Sharma, Adv.  
Ms. H.V.Tamanna, Adv.  
Mr. Shanay Shah, Adv.  
M/S.Dua Associates, AOR****For Respondent(s) Mr. Mukul Rohatgi, Sr. Adv.  
Dr. A.M.Singhvi, Sr. Adv.  
Mr. N.K.Kaul, Sr. Adv.  
Mr. Mahesh Agarwal, Adv.  
Mr. Ankur Saigal, Adv.  
Ms. Kalyani K.Shukla, Adv.  
Mr. Abhinav Agrawal, dv.  
Mr. Rohan Dakshni, Adv.  
Ms. Sweta Jaidev, Adv.  
Mr. Yojit Mehra, Adv.  
Mr. E.C.Agrawala, AOR****Mr. Nishant Ramakantrao Katneshwarkar, AOR****Mr. A.N.S.Nadkarni, ASG  
Mrs.Suchitra Atul Chitale, AOR  
Mr. S.S.Rebello, Adv.  
Ms. Arzu Paul, Adv.  
Mr. Neeleshwar Pavani, Adv.  
Ms. Shivikka Agrawal, Adv.  
Ms. Riya Soni, Adv.**

Mr. Akansha Jain, Adv.  
Ms. Tanvi Kakar, Adv.  
Ms. Preeti Purandare, Adv.

Mr. Rahul Chitnis, Adv.  
Mr. Aaditya A. Pande, Adv.  
Mr. Sachin Patil, Adv.

Mr. Shekhar Naphade, Sr. Adv.  
Mr. Chirag M. Shroff, AOR  
Ms. Yashika Verma, Adv.

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

The petitioners filed Public Interest Litigation No.48 of 2016 in the High Court of Judicature at Bombay seeking a declaration that the Municipal Corporation of Greater Mumbai (MCGM) and the Maharashtra Housing and Area Development Authority (MHADA) have illegally exercised powers in granting permission to construct a high rise building in violation of Regulation 67(2)(iii) (b) of the Development Control Regulations (DCR). By an interim order dated 20.1.2017, the High Court of Judicature at Bombay directed that the construction undertaken by RA Realty shall be subject to the outcome of the proceedings before the High Court of Judicature at Bombay.

The High Court allowed the PIL partly on 19.10.2018 holding that the MHADA and the Corporation failed to apply their mind to the factual matrix, i.e. whether tenancy was rightly assigned in law and location of 'Villa Nirmala' on the road with width of more than 18

meters. In such view of the matter, the High Court directed the respondents to reconsider the issue of invoking the regulation DCR 33 (7) in favour of Respondent No.9 therein granting No Objection for redevelopment of 'Villa Nirmala' and also granting benefit under Regulation 31 of DCR by considering that the said building is abutting 18 meter wide road.

The High Court refused to place any embargo or injunction on the right of respondent No.9 therein by stalling the development activity. However, it was observed that the said development shall be subject to the decision taken by the respondent-Corporation and MHADA, pursuant to the directions issued.

In compliance of the direction issued by the High Court, the Municipal Corporation of Greater Mumbai passed an order dated 09.01.2019 in which it was held that the proposed building with 69.95 Height can be allowed under the provisions of the DCR 33 (7) and 31 (1) of Modified DC Regulation 1991. Later, MHADA found the NOC for redevelopment issued by Mumbai Building, Repair & Reconstruction Board to be in accordance with DCR 33(7) read with Appendix III and Maharashtra Housing and Area Development Act, 1976.

When the matter was taken up for hearing today, we enquired from Mr.J.P.Cama, learned senior counsel appearing for the petitioners as to why the above orders passed pursuant to the directions issued by the High

Court cannot be challenged before the High Court. He submitted that, it was indicated by this Court on an earlier occasion that the dispute shall be finally settled by this Court. He further submitted that the Petitioners proposed to assail the validity and legality of DCR 33(7) and that it is better that this Court should hear the matter instead of sending it back to the High Court. Learned Additional Solicitor General Mr. A.N.S.Nadkarni and Mr. Mukul Rohatgi, Dr.A.M.Singhvi and Mr.N.K.Kaul, learned senior counsel appearing for the respondents submitted that this Special Leave Petition does not survive as the directions given by the High Court in the impugned judgment have been complied with. If the petitioners are aggrieved by the orders passed by the authorities, they are free to approach the High Court. Any further reliefs that are sought by the petitioners in their attempt to challenge DCR can also be sought before the High Court.

After considering the submissions made by the learned senior counsel for the both the parties, we are of the opinion that the petitioners have to approach the High Court if they are aggrieved by the orders dated 20.1.2017 and 19.10.2018.

A request is made by Mr.J.P.Cama, learned senior counsel that the interim protection given by the High Court should be extended for a further period of two weeks to enable the petitioners to approach the High

Court. He apprehends that if such protection is not given, NOC may be given by MHADA - R-10 and third party rights may be created by R-9. We are unable to accept this submission of Mr.Cama, learned senior counsel. He is at liberty to approach the High Court at the earliest and seek appropriate relief.

We have not expressed any opinion on the merits of the matter and the parties are at liberty to raise all contentions in the writ petition that may be filed by the Petitioners.

The Special Leave Petition along with pending application(s), if any, stand disposed of.

(B.Parvathi)  
Court Master

(Anand Prakash)  
Court Master

ITEM NO.9

COURT NO.11

SECTION IX

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

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