

A MUNICIPAL CORPORATION OF GREATER MUMBAI  
v.  
BOMBAY ENVIRONMENTAL ACTION GROUP AND ORS.

MARCH 7, 2006

B [S.B. SINHA AND P.P. NAOLEKAR, JJ.]

C *Constitution of India, 1950—Article 136—Expunction of remarks—Disparaging remarks made by High Court against Appellant for its conduct—Found unnecessary by this Court—Hence, directed to be expunged—Town Planning—Maharashtra Regional and Town Planning Act, 1966—Development Control Regulations, 1991 [As amended in 2001 and clarified in 2003]—DCR 58 & 37.*

D A writ petition was filed before High Court questioning the validity of Development Control Regulation No.58 (DCR 58) framed by the State of Maharashtra in terms of the Maharashtra Regional and Town Planning Act, 1966. DCR 58 was made with a view to deal with the situation arising out of closure and/or unviability of various cotton textile mills occasioned inter alia by reason of a strike resorted to by the workers thereof. It provided for development/ re-development of lands belonging to such cotton textile mills. The main thrust of the writ petitioners was to ensure E “open spaces” for the city and to provide space for “public housing”.

In the said writ petition, the High Court made disparaging remarks against the Appellant for its conduct.

F Allowing the appeal and directing the said remarks to be expunged, the Court

G HELD: 1. The High Court had commented that the Appellant had admitted that the developers are not providing for any public amenities. In this regard it was pointed out by the Appellant that in terms of Development Control Regulation (DCR) 27, only 5% of the total area was to be designated as “Amenities” only when the plot area exceeds 2 hectares. In view of the fact that the said DCR 27 was required to be read with DCR 58, as the share of the owner was less than 2 hectares, the lands were permitted to be developed as there was no requirement to provide

additional 5% public amenities. It has not been shown that DCR 27 has been violated. [1078-H; 1079-A-B] A

2. The High Court, furthermore, held that Appellant took no steps as regard compliance of Environmental Impact Assessment (EIA) notification until they directed to do so during the final hearing of the writ petition. But it is not in dispute that completion or occupation certificate had not been given and as such no prejudice had been caused to anybody. It was submitted that the Appellant was under the belief that the mill owners/ developers could produce the required permission of MOEF before submitting completion certificate and obtaining occupation certificate. [1079-B, C] B C

3. It was furthermore opined by the High Court that Appellant had not ensured that all the mill owners should provide free housing of 225 sq. ft. to the occupants. But as rightly submitted by the Appellant, the mill owners in none of the cases had come forward for development / redevelopment of residential built up area occupied by the chawls and, therefore, the question of allotting housing area of 225 sq. ft. to each occupant never arose in terms of DCR 58 (7). In terms of DCR 58(7), the eligible occupants are to be provided alternative accommodation of 225 sq. ft. and only then the developer would be able to utilize the vacant land and, therefore, such questions would arise when the areas covered by the chawls are to be developed and till then the occupant would remain in their tenements. [1079-D, F] D E

4. As regard the finding of the High Court that the Appellant has not ensured surrendering of lands for "open spaces" and "public housing" at the time of issue of commencement certificate, it was contended that surrendering of land is possible when the encumbered portions of the land are cleared and relocated in such a manner as to facilitate availability of vacant land for assigning them to housing as well as open spaces facilitating proper access to such lands. It is not the requirement of law that such physical surrender of land is obtained for such purposes at the time of issuing initial commencement certificate itself. [1079-G; 1080-A] F G

5. It was further pointed out that while considering the purported concession said to have been made that the Appellant did not have even a single officer with the qualification of Town Planning, the High Court failed to take into consideration that the qualifications of the Town Planning Officer are laid down in the statute and all the concerned officers H

**A** fulfil the statutory requirements. [1080-B]

**6.** This Court agrees with the contentions raised by the Appellant. Furthermore, having regard to the judgment and order proposed to be delivered in the main matter [Civil Appeal arising out of S.L.P. (C) No. 23040 of 2005] such comments of the High Court were probably unnecessary and, therefore, directed to be expunged. [1080-C-D]

*Bombay Dyeing and Mfg. Co. Ltd. v. Bombay Environmental Action Group*, [C.A. No.1519 of 2006 arising out of SLP(C) No. 23040 of 2005], referred to.

**C** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1548 of 2006.

From the Final Judgment and Order dated 17.10.2005 of the Bombay High Court in PIL Writ Petition No. 482/2005.

**D** Ravi M. Kadam, Adv. Gen., Harish N. Salve, Iqbal Chagla, M.L. Verma, Colin Gonsalves, Dinesh Dwivedi, Janak Dwarkadas, K.K. Singhvi, Ujjainwala S.H., Rakesh Katana, D.N. Mishra, Jay Savla, Gautam Patel, Parag Kabadi, Lynn Periera, Sharan Jagtiani, Devansh Mohta, Ms. Reena Bagga, Ms. Meenakshi Ogra, Ms. Meenakshi, Satya Mitra, M.N. Shroff, Ms. Anuradha Singh, Ms. Aparna Bhat, Ravindra K. Adsure, Sambhaji S. Shinde, V.N. Raghupathy, Anirudha P. Mayee, Mukesh Verma, Ashok B. Jain, D.T. Devale, Manish Shanker, Pankaj K. Singh, Ashish Mohan, Yash Pal Dhingra, N.M. Ganguly, Vinay Navare, Naresh Kumar, C.S. Ashri, Prashant Bhushan, Vishal Gupta, Rohit Kumar Singh, Ms. Sumeet Sharma, Vikas Mehta, Mahesh Agarwal, Manu Krishnan and E C. Agrawala for the appearing parties.

**F** The Judgment of the Court was delivered by

**S.B. SINHA, J.** Leave granted.

**G** This appeal has been preferred by the Municipal Corporation of Greater Mumbai (MCGM) whereby the conduct of MCGM had been criticised under the caption "Certain Disturbing Aspects".

**H** The High Court commented that the Appellant had admitted that the developers are not providing for any public amenities. The submission of Mr. K.K. Singhvi, learned senior counsel appearing on behalf of the Appellant is that the information sought for had been supplied by the Appellant by way of affidavits affirmed by the Chief Engineer (DP) on 14.9.2005 and 15.9.2005

wherein it was pointed out that in terms of Development Control Regulation (DCR) 27, only 5% of the total area was to be designated as "Amenities" only when the plot area exceeds 2 hectares. In view of the fact that the said DCR 27 was required to be read with DCR 58, as the share of the owner was less than 2 hectares, the lands were permitted to be developed as there was no requirement to provide additional 5% public amenities. It has not been shown that DCR 27 has been violated. The High Court, furthermore, held that MCGM took no steps as regard compliance of EIA notification until they directed to do so during the final hearing of the writ petition. It is not in dispute that completion or occupation certificate had not been given and as such no prejudice had been caused to anybody.

Mr. Singhvi submitted that MCGM was under the belief that the mill owners/ developers could produce the required permission of MOEF before submitting completion certificate and obtaining occupation certificate.

Indisputably, the requirements of EIA notification were required to be complied with. We have deliberated upon this question in Civil Appeal arising out of S.L.P. (C) No. 23040 of 2005 *Bombay Dyeing & Mfg. Co. Ltd. v. Bombay Environmental Action Group*. It was furthermore opined by the High Court that MCGM had not ensured that all the mill owners should provide free housing of 225 sq. ft. to the occupants.

It was rightly submitted by Mr. Singhvi that the mill owners in none of the cases had come forward for development/ redevelopment of residential built up area occupied by the chawls and, therefore, the question of allotting housing area of 225 sq. ft. to each occupant never arose in terms of DCR 58(7). In terms of DCR 58(7), the eligible occupants are to be provided alternative accommodation of 225 sq. ft. and only then the developer would be able to utilise the vacant land and, therefore, such questions would arise when the areas covered by the chawls are to be developed and till then the occupant would remain in their tenements.

As regard the finding of the High Court that the Appellant has not ensured surrendering of lands for "open spaces" and "public housing" at the time of issue of commencement certificate, it was contended that surrendering of land is possible when the encumbered portions of the land are cleared and relocated in such a manner as to facilitate availability of vacant land for assigning them to housing as well as open spaces facilitating proper access to such lands.

A It is not the requirement of law that such physical surrender of land is obtained for such purposes at the time of issuing initial commencement certificate itself.

B Mr. Singhvi has further pointed out that while considering the purported concession said to have been made by him that the MCGM did not have even a single officer with the qualification of Town Planning, the High Court failed to take into consideration that the qualifications of the Town Planning Officer are laid down in the statute and all the concerned officers fulfil the statutory requirements.

C We agree with the contentions raised by Mr. Singhvi. Furthermore, having regard to the judgment and order proposed to be delivered in the main matter [Civil Appeal arising out of S.L.P. (C) No. 23040 of 2005], we are of the opinion that such comments of the High Court were probably unnecessary and, therefore, directed to be expunged. The appeal is allowed.

D B.B.B.

Appeal allowed.