

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1658 OF 2020
(@ out of SLP (C) No. 19028/2019)

RED ROSE CO OPERATIVE HOUSING SOCIETY
LTD & ANR.

Appellant(s)

VERSUS

THE MUNICIPAL CORPORATION OF GREATER
MUMBAI & ORS.

Respondent(s)

O R D E R

Leave granted.

This appeal challenges the order dated 06-06-2019 passed by the High Court Of Judicature at Bombay in Contempt Petition (L) No. 5/2018 in Writ Petition No.1740 of 2016.

The aforesaid writ petition had come up before the Division Bench of the High Court and was allowed vide Order dated 21.08.2017.

The principal prayer in the petition was that the Municipal Corporation be directed to undertake measures to improve and repair the access road as Indicated in the Chart annexed to the petition and for a writ of Mandamus directing the authorities to remove the encroachment over access road and

provide to the petitioner-society all facilities including sewage and drainage.

The difficulty faced by the Municipal Corporation was noted by the High Court in Para 5 of its order. The grievance raised by the private respondent and the reliance placed on the pendency of the matter in L.C. Suit No. 6092 of 1993 before the City Civil Court, Mumbai was also noted. It was further noted that the pendency of proceedings between the private respondent and the writ petitioner would not cause any impediment in the Municipal Corporation discharging its statutory functions. Paragraphs 5 to 10 of the Order dated 21.8.2017 were as under:

"5. Learned counsel for the respondent-Corporation states that though the Corporation has attempted to carry out the repairs of the road and provide drainage facilities, on account of interruption by Respondent No. 3, it is not in a position to do so. Learned counsel for the Corporation further submits that Respondent No.3 has even brought gunda elements so as to obstruct the Corporation from discharging its statutory duties.

6. We fail to appreciate the helplessness expressed on behalf of the Corporation. We are of the considered view that, in India, it is a rule of law which prevails. If, in accordance with law, statutory duties are imposed upon the statutory authority, the statutory authority is bound to discharge those duties. It is surprising to note that excuse is sought to be given by the Corporation that on account of help being taken by Respondent No.3 of gunda elements, Corporation is not in a position to discharge its duties. If there is any obstruction by any one in the Corporation discharging its statutory duties, Corporation can very well apply to Police Authorities and the Police Authorities would be bound to provide necessary police assistance for enabling the Corporation to discharge its statutory duties.

7. We make it clear that we are not considering the private dispute between Respondent No.3 on the one hand and

petitioners and respondent No.4 on the other hand. However, perusal of the material placed on record and particularly judgment and order passed by the learned City Civil Court Judge in L.C. Suit No.6092 of 1993 dated 02.01.2003 would reveal that the claim of the present Respondent No.3 with regard to road from C.S.T. Road to Parkbay Society through Survey No.295, 10 part, 12 part, C.T.S. No.4949 is already rejected by the learned City Civil Court Judge. It would further appear that the second suit filed by the present Respondent NO.3 being L.C. Suit No.4271 of 2001 was also dismissed with costs vide order dated 16.11.2004.

8. Learned Counsel for respondent No.3 relies on further order passed by the learned Single Judge of this Court dated 16/03/2011 in C.A. No. 4546/2005 in F.A. No. 1267/2006 wherein the learned Single Judge has observed that in view of the statement made by Respondent No. 4 in the said appeal, who is also Respondent No.4 in the present appeal, there is no apprehension that any work of laying down cable or pipe lines etc would be carried out on the applicant's property. However, learned counsel for Respondent No. 3 has not been in a position to point out any injunction restraining the Corporation from discharging its statutory duties.

9. If the road is on the property which was the subject matter of L.C Suit No. 6092 of 1993, we are of the considered view that in view of dismissal of the said suit and also the subsequent suit, there should be no impediment with the Corporation in discharging its statutory duties.

10. We therefore allow the Petition in the following terms:

(i) Respondent Nos. 1 and 2 shall rake immediate steps for providing drainage/sewage facilities and for carrying out work of development of the road if the land on which the road if to be improved is a part of the land which was the subject matter of the L.C. Suit No.6092 of 1993. Needless to state that if there is any obstruction by any gunda elements, Corporation would be entitled to apply to the Police Authorities for protection. Police Authorities, on such application being made, shall provide necessary protection to the Officers of the Corporation to carry out its statutory duties.

(ii) Rule is made absolute in the aforesaid terms."

It is thus clear that directions of binding nature were issued to extend to the writ petitioner facilities of drainage, sewage and access road.

Complaining that said directions issued by the High Court were not being complied, Contempt petition (L) No.5 of 2018 was preferred by the Writ Petitioner Society. The contempt petition was however, dismissed by the High Court on the ground that Section 63 (K) of the Mumbai Municipal Corporation Act, 1988 casts only a discretionary duty on the Municipal Corporation and as such the matter could not be considered in contempt jurisdiction.

In this appeal, we heard Mr. Siddhartha Dave, learned Senior Advocate for the appellant, Mr. A.N.S. Nadkarni, learned A.S.G. for the Municipal Corporation and Mr. Vivek Shukla, learned Advocate for the Private respondent.

At the outset, Mr. Nadkarni submits that the Municipal Corporation is not only bound by the directions issued by the High Court in its order dated 28.02.2017 but must extend the facilities as directed within reasonable time. The only apprehension expressed by the learned counsel is about the dispute between the private respondent and the writ petitioner.

In our view, any such dispute ought not to stop the respondent-Corporation from extending the facilities as directed. The High Court had noted the existence of the dispute and yet had passed the directions. The Municipal Corporation had sought

review of the direction but was unsuccessful in its attempt. No further challenge was raised. The private respondent had challenged the directions but SLP was dismissed by this Court on 21.8.2017.

In the circumstances, in our considered view, the directions issued by the High Court which had attained finality, ought to be complied with.

The stand taken by the Municipal Corporation in its affidavit in reply and specially in para 5 is consistent with the binding nature of the directions and the obligation on the part of the Municipal Corporation to comply with them.

In the circumstances while allowing this appeal, we direct:

(a) Within six months from today, the Municipal Corporation for Greater Mumbai shall comply with all the directions issued by the High Court in its Order dated 21.8.2017 and shall extend to the appellant all the facilities including access road, drainage and sewage.

(b) The extension of these facilities shall be regardless of any objection raised from any quarters and the Municipal Corporation shall be at liberty to remove all impediments including any unauthorised structure causing hindrance to extension of these facilities.

(c) The private dispute between the parties shall be considered on its own merits and the equities shall thereafter be

adjusted by the concerned Court.

We shall not be taken to have pronounced upon the rival stand or contentions of the concerned parties in so far as the merits or demerits of contentions are concerned.

The appeal is allowed in aforesaid terms. No costs.

.....J.
(UDAY UMESH LALIT)

.....J.
(ANIRUDDHA BOSE)

New Delhi
February 17, 2020.

ITEM NO.41

COURT NO.6

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). 19028/2019

(Arising out of impugned final judgment and order dated 06-06-2019 in CPL No. 5/2018 passed by the High Court Of Judicature At Bombay)

RED ROSE CO OPERATIVE HOUSING SOCIETY LTD & ANR. Petitioner(s)

VERSUS

THE MUNICIPAL CORPORATION OF GREATER MUMBAI & ORS. Respondent(s)

(FOR ADMISSION and I.R. and IA No.119263/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.119262/2019-EXEMPTION FROM FILING O.T. and IA No.128282/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES and IA No.128281/2019-APPLICATION FOR PERMISSION)

Date : 17-02-2020 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE ANIRUDDHA BOSE

For Petitioner(s) Mr. Siddhartha Dave, Sr. Adv.
Mr. Bhushan Oza, Adv.
Mr. Anuj Kumar Chauhan, Adv.
Mr. Manish Kumar Gupta, AOR

For Respondent(s) Mr. Vivek Shukla, Adv.
Mr. Pai Amit, AOR

Mr. Atmaram Nadkarni, ASG
Mr. Ashish Wad, Adv.
Ms. Jayashree Wad, Adv.
Mr. Sidharth Mahajan, Adv.
Ms. Sukriti Jaggi, Adv.
Mr. Ajeyo Sharma, Adv.
Mr. S.S. Rebello, Adv.
Mr. Neelashwar Pavani, Adv.
M/S. J S Wad And Co, AOR

Ms. Liz Mathew, AOR
Mr. Navneet R., Adv.
Ms. Sonali Jain, Adv.

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

Leave granted.

The appeal is allowed in terms of the signed order.

Pending applications, if any, also stands disposed of.

(INDU MARWAH)
COURT MASTER

(SUMAN JAIN)
ASSISTANT REGISTRAR

(signed order is placed on the file)