

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 1253-1271 of 2020
[@ Special Leave to Appeal (C) No(s). 21861-21879/2018]

THANE MUNICIPAL CORPORATION & ORS. Appellant(s)

VERSUS

JAVED KHALIQ KHAN ETC. Respondent(s)

WITH
CIVIL APPEAL NO. 1272 of 2020
[@ Special Leave to Appeal (C) No. 28744/2017]

O R D E R

CIVIL APPEAL NOS. 1253-1271 of 2020 @ Special Leave to Appeal (C)
No(s). 21861-21879/2018

Leave granted.

We have heard learned counsel for the parties.

These appeals have been filed against the judgment of the High Court dated 21.06.2018 rendered in several writ petitions filed by the respondents herein. The respondents had structures and shops within Municipal Corporation, Thane. The Corporation, for road widening, demolished certain structures and shops belonging to the respondents. A group of writ petitions was filed in the High Court challenging the action of the Municipal Corporation of demolishing their structures and shops. The High Court in the impugned judgment has noted the details of facts of each of the writ petition and the prayers made therein. The High Court relying on

an earlier judgment of the Bombay High Court in *Sopan Maruti Thopte And Another vs Pune Municipal Corporation* [AIR 1996 Bombay 304] passed the following order in the writ petition:

"31. Hence, we pass the following order:

(I) It will be open for the petitioners to reconstruct their respective demolished structures which are subject matter of these petitions at their cost;

(II) While carrying out reconstruction, the petitioners shall ensure that the area of the reconstructed structures will be same as the area of the respective structures on the date of its demolition. The construction material of the same type shall be used for reconstruction;

(III) Before commencement of the work of reconstruction, the petitioners shall serve a notice in writing to the Designated Officer of the concerned ward. The notice shall be advance notice of seven days mentioning the time at which the work of reconstruction shall commence. It will be open for the Designated Officer or any other Officer nominated by him to remain present at the time of reconstruction;

(IV) We make it clear that even if the shops/structures subject matter of these petitions are reconstructed, the same will not confer any legality on the structures. If the original shops / structures were constructed without obtaining development

permission, after reconstruction of the said shops / structures, it will be open for the said Municipal Corporation to take action of demolition of the reconstructed shops / structures. However, action of demolition shall not be initiated without complying with the directions issued by this Court in the case of Sopan Maruti Thopate (supra);

(V) We make it clear that the said Corporation shall be bound by its General Body Resolution No.66 dated 18th July 2014, so long as it is not modified, rescinded or cancelled in accordance with law;

(VI) It will be open for the petitioners to make a representation to the said Corporation for seeking compensation by providing all the details. Such representations, if made, shall be decided by the said Corporation. The decision taken thereon shall be communicated to the concerned petitioners within two months from the date of the representation. No adjudication is made on merits of the claim for compensation;

(VII) Rule is made partly absolute on above terms with no order as to costs;

(VIII) We direct that the Order to reconstruction shall not be implemented for a period of one month from the date on which this Judgment is uploaded;

(IX) All concerned to act upon an authenticated copy of this Judgment and order."

The Corporation aggrieved by the said judgment has come up in these appeals.

Learned counsel for the appellants contends that the constructions, which had been demolished, were the constructions made without any valid building permission and for road widening the Corporation had a right to remove the obstructions for the road widening and the action of the Corporation was in accordance with law.

Learned counsel appearing for the respondents submits that the respondents were carrying on their livelihood from the structures and shops which had been suddenly demolished without any prior notice. It is further submitted that there was already a General Body Resolution dated 18th July, 2014 which required the Corporation to provide an alternative site, if their constructions were demolished but under the said resolution, the Corporation never offered any alternative site.

Learned counsel for the appellants in rejoinder submits that the sites were offered to the respondents which were not accepted by the respondents saying that they are not suitable.

Learned counsel for the appellants has placed reliance on the judgment of this Court in *Municipal Corporation of Greater Mumbai & Ors. v. M/s Sunbeam High Tech Developers Private Ltd.* [2019 (14) SCALE 378] where this Court had occasion to consider case where the Municipal Corporation had demolished structures in exercise of power vested in it but in violation of the procedure. The High Court in the aforesaid judgment had issued direction for permitting

the owners of the structures and shops to reconstruct and further granted liberty to the Corporation to demolish after due notice. This Court allowed the appeal and set aside the direction of the High Court. This Court permitted Corporation to take an appropriate action after due notice with regard to structures which were not constructed as under the Order of the High Court and set aside the direction of the High Court where it allowed reconstruction. It is laid down in paras 23, 24 and 25 by this Court:

"23. We also would like to give further directions regarding the manner in which the evidence of illegal construction/reconstruction etc., is collected and notices are issued and served. We, therefore, issue the following directions:

(1) It will be obligatory for all Municipal Corporations in the State of Maharashtra where the population is 50 lakhs or more to get geomapping and geophotography of the areas under their jurisdiction done within a period of one year. Geomapping will also be done of an area of 10 Kms. from the boundary of such areas. The records should be maintained and updated by the Municipal Corporations within such time period as the Municipal Corporation deems fit, keeping in mind the specific circumstances of the area under its jurisdiction.

(2) Whenever any new area, which is not already geomapped, is brought under the jurisdiction of a particular municipality, it will be the duty of the concerned Municipal Corporation to ensure that geomapping of the area is conducted and the geomapping records of such area are created at the earliest.

(3) In cases where buildings are already existing and it is alleged by the Municipal Corporation that the building has been constructed in violation of applicable laws:

3.1. The Commissioner/Competent Authority on coming to know that an illegal building has been constructed,

shall issue a show cause notice giving 7 days in terms of Section 351 to the owner/occupier/builder/contractor etc. Along with this notice the Commissioner/Competent Authority shall also send photographs and visual images taken on the site clearly depicting the illegal structure. Photographs and images should digitally display the time and date of taking the photographs;

3.2. In case the notice is not replied to within the time prescribed, i.e., 7 days, then the building shall be immediately demolished by the Municipal Corporation;

3.3 In case the owner files a reply to the notice, the Commissioner/Competent Authority of the Municipal Corporation shall consider the reply and pass a reasoned order thereon. In case the reply is not found satisfactory then the order shall be communicated in the manner laid down hereinafter to the owner/occupier/builder/contractor etc. giving him further 15 days' notice before demolition of the property.

During this period the owner/occupier/builder/contractor etc. can approach the appellate/revisional authority or the High Court. (4) In those cases where according to the municipal corporation there is ongoing construction which is being carried on in violation of the applicable laws:

4.1. The Commissioner/Competent Authority on coming to know that there is ongoing construction in violation of the applicable laws shall issue a show cause notice giving 24 hours in terms of Section 351 to the owner/occupier/builder/contractor/architect etc. Along with this notice the Commissioner/Competent Authority shall also send photographs and visual images taken on the site clearly depicting the illegal structure. Photographs and images should digitally display the time and date of taking the photographs;

4.2. The Commissioner/Competent Authority can also issue an interim 'stopconstruction' order along with the notice or any time after issuing the notice. Such order shall also include the relevant pictures of the alleged violation(s). Photographs and images should digitally display the time and date of taking the photographs;

4.3. In case the notice is not replied to within the time prescribed, i.e., 24 hours, then the building shall be immediately demolished by the Municipal Corporation;

4.4. In case the owner/occupier/builder/contractor/architect etc. files a reply to the notice, the Commissioner/Competent

Authority of the Municipal Corporation shall consider the reply and pass a reasoned order thereon. In case the reply is not found satisfactory then the order shall be communicated in the manner laid down hereinafter to the owner/occupier/builder/contractor/architect etc. giving him further 7 days' notice before demolition of the property. During this period the owner/occupier/builder/contractor/architect etc. can approach the appellate/revisional authority or the High Court.

(5) In regard to service of notice we direct as follows:

5.1. Wherever possible notice shall be served personally on the person who is raising or has raised the illegal structure including the owner/occupier/builder/contractor/architect etc.;

5.2. Notice, in addition to the traditional mode, can also be sent through electronic means, both by email and by sending a message on the mobile phones. Even a message to a foreman or person incharge of the construction at the site will be deemed to be sufficient notice;

5.3. In the notice, the municipal authorities shall also give an email ID and phone number where the noticee can send his reply through email or messaging services. This will hopefully do away with all disputes with regard to alleged nonservice of notice.

(6) Till the State frames any laws in this regard, we direct that before any construction/reconstruction, or repair not being a tenantable repair is carried out, the owner/occupier/builder/contractor/architect, in fact all of them should be required to furnish a plan of the structure as it exists. They will also provide an email ID and mobile phone number on which notice(s), if any, can be sent. This map can be taken on record and, thereafter, the construction can be permitted. In such an eventuality even if the demolition is illegal it will be easy to know what were the dimensions of the building. This information should not only be in paper form in the nature of a plan, but should also be in the form of 3D visual information, in the nature of photographs, videos etc.

24. As far as Civil Appeal No. 7627 of 2019 @ SLP(C) No.15909 of 2018 is concerned the structure has been rebuilt. That obviously cannot be undone now. We, however, direct the municipal corporation to ensure

that fresh notice is issued to the respondent and thereafter action is taken strictly in accordance with law. The whole process should be completed within a period of three months. In case an order adverse to the respondent is passed by the municipal corporation, then the respondent will be at liberty to approach the High Court and raise all grounds available to it.

25. As far as Civil Appeal No.7626 of 2019 @ SLP(C) No.16489 of 2018 is concerned, reconstruction has not been done and, therefore, we partly allow the appeal and set aside the order of the High Court to the extent it allows reconstruction. We remit the matter to the High Court which is requested to proceed in accordance with law laid down in this case."

In view of the judgment passed by this Court in *Municipal Corporation of Greater Mumbai & Ors. v. M/s Sunbeam High Tech Developers Private Ltd.* (supra), the directions issued by the High Court in para 31 cannot be sustained.

We set aside the said direction. In so far as the submissions of learned counsel for the parties with regard to alternative accommodation, the Corporation's case is that all the owners of structures and shops may not be entitled to alternative accommodation whereas learned counsel for the respondents submits that by virtue of General Body Resolution of the Corporation dated 18th July, 2014 all persons whose structures had been demolished are entitled for the alternative accommodation.

It is further submitted by learned counsel for the respondents that there are some shops and structures which can still be permitted and they in no manner had been effecting the road widening.

We are of the view that all these factual issues and

submissions can be looked into by the High Court and their grievances may be considered.

We, thus, while setting aside the impugned judgment of the High Court revive the writ petitions before the High Court for a fresh consideration. It shall be open for the parties to make their submissions with regard to alternative accommodation or claim of compensation.

The constructions, having been demolished in 2016, the High Court may endeavour to dispose of their claim for alternative accommodation or compensation in accordance with law and policy of the Corporation as applicable, at an early date.

The civil appeals are disposed of with no order as to costs.

Pending application, if any, stands disposed of.

CIVIL APPEAL NO. 1272 of 2020 @ Special Leave to Appeal (C) No. 28744/2017

Leave granted.

In view of the above order, the civil appeal stands disposed of.

Pending application, if any, stands disposed of.

.....J.
[ASHOK BHUSHAN]

.....J.
[M.R. SHAH]

NEW DELHI;
FEBRUARY 7, 2020.

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). 21861-21879/2018

(Arising out of impugned final judgment and order dated 21-06-2018 in WP No. 7856/2016 21-06-2018 in WP No. 4754/2017 21-06-2018 in WP No. 9242/2016 21-06-2018 in WP No. 7857/2016 21-06-2018 in WP No. 7858/2016 21-06-2018 in WP No. 7860/2016 21-06-2018 in WP No. 7861/2016 21-06-2018 in WP No. 7863/2016 21-06-2018 in WP No. 7864/2016 21-06-2018 in WP No. 9122/2016 21-06-2018 in WP No. 6429/2017 21-06-2018 in WP No. 6738/2016 21-06-2018 in WP No. 6739/2016 21-06-2018 in WP No. 9517/2016 21-06-2018 in WP No. 11345/2016 21-06-2018 in WP No. 6697/2016 21-06-2018 in WP No. 7460/2016 21-06-2018 in WP No. 26330/2016 21-06-2018 in WP No. 9520/2016 passed by the High Court Of Judicature At Bombay)

THANE MUNICIPAL CORPORATION & ORS.

Petitioner(s)

VERSUS

JAVED KHALIQ KHAN ETC.

Respondent(s)

(IA No. 9543/2020 - CLARIFICATION/DIRECTION and IA No. 10387/2020 - CLARIFICATION/DIRECTION and IA No. 113666/2018 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No. 9553/2020 - EXEMPTION FROM FILING O.T. and IA No. 9552/2020 - EXEMPTION FROM FILING O.T. and IA No. 113668/2018 - EXEMPTION FROM FILING O.T. and IA No. 10390/2020 - EXEMPTION FROM FILING O.T. and IA No. 9544/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES and IA No. 154947/2018 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH

SLP(C) No. 28744/2017 (IX)

(FOR I.R. and IA No.110819/2017-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.110822/2017-EXEMPTION FROM FILING O.T.)

Date : 07-02-2020 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ASHOK BHUSHAN
HON'BLE MR. JUSTICE M.R. SHAH

For Petitioner(s) Mr. Vinay Navare, Sr. Adv.
Ms. Gwen Karthika, Adv.
Ms. Abha R. Sharma, AOR

For Respondent(s) Mr. Kunal Cheema, AOR
Ms. Aditi Parkhi, Adv.

Mr. S.S. Choudhari, Adv.
Mr. Yogesh Kolte, Adv.

Mr. Mahesh P. Shinde, Adv.
Mr. Govind Venugopal, Adv.

Mr. Sandeep Sudhakar Deshmukh, AOR
Mr. Vasim Siddiqui, Adv.

Mr. Arun Kumar Sharma, Adv.
Ms. Tatini Basu, AOR

Mr. Nishant Ramakantrao Katneshwarkar, AOR

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

The civil appeals are disposed of in terms of the signed order.

Pending applications stand disposed of.

(MEENAKSHI KOHLI)
AR-CUM-PS

(RENU KAPOOR)
COURT MASTER

[Signed order is placed on the file]