

ITEM NO.57

COURT NO.15

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). 7223/2020

(Arising out of impugned final judgment and order dated 13-03-2019 in WPL No. 401/2019 passed by the High Court Of Judicature At Bombay)

MUNICIPAL CORPORATION OF GREATER MUMBAI & ANR. Petitioner(s)

VERSUS

PUSHPA MANOHAR DAWANE & ANR. Respondent(s)

([TO BE TAKEN UP AT 2:00 P.M.]

IA No. 24086/2024 - EXEMPTION FROM FILING O.T.

IA No. 38827/2020 - EXEMPTION FROM FILING O.T.

IA No. 24085/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 22-07-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA

HON'BLE MR. JUSTICE PANKAJ MITHAL

For Petitioner(s) Mr. ANS Nadkarni, Sr. Adv.
 Mr. Madhav Chitale, Adv.
 Mr. Nirbhay Singh, Adv.
 Ms. Jayati Chitale, Adv.
 Mr. Shauryapratapsinh Barhat, Adv.
 Mrs. Suchitra Atul Chitale, AOR

For Respondent(s) Mr. Abhay Anil Anturkar, Adv.
 Mr. Dhruv Tank, Adv.
 Mr. Aniruddha Awalgaonkar, Adv.
 Mr. Bhagwant Deshpande, Adv.
 M/S. Dr. R.R. Deshpande And Associates, AOR

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

1. This Special Leave Petition is against the judgment and order passed by the High Court of Judicature at Bombay in WPL

No.401/2019 dated 13.03.2019 by which the High Court has allowed the writ petition filed by the respondents herein challenging the notice dated 01.02.2019 issued by the petitioner(s) under Section 54 of the Maharashtra Regional and Town Planning Act, 1966¹.

2. The short facts relevant for our consideration are that respondent no.1 is said to have purchased the property way back in 2002 and applied to the Sub-Divisional Officer for permission for land filling and changing the use of land for commercial purposes. The permission was granted on 08.02.2002. Clause 36 of the said permission which is relevant for our consideration is extracted as under:

“..
36. The proposed excavation plan indicating the depth of quarrying etc. should first be got approved from the Director of Geology and Mining and the Planning Authority...”

3. For certain violations, the petitioner issued a notice under Section 54 of the Act. Questioning the said notice, respondent no.1 filed a writ petition which came to be allowed on 13.03.2019 by the High Court by the order impugned before this Court. In its order, the High Court observed that the respondent(s) applied for permission and received it 16 years ago and at that point of time there was no mangrove or natural

1 For short “The Act”

vegetation. The High Court also observed that the business undertaken by the respondent(s) was of plying buses, which needed to be parked and the land in question, was utilized for that purpose. The High Court also observed that the petitioner was not carrying out any construction, engineering or mining activity within the premises under Section 2(7) of the Act, defining the expression "development".

4. Mr. Nadkarni, learned Senior Advocate assisted by Mrs. Suchitra Atul Chitale, learned counsel appearing for petitioner-Corporation submits that the approach adopted by the High Court is completely unwarranted in as much as the notice specifically provided that the permission of the Planning Authority was to be taken before any activity is undertaken. Admittedly, the respondent(s) has not taken any such permission and this aspect has been ignored by the High Court.

5. Mr. Nadkarni further submits that the High Court should not have interfered with the notice issued under Section 54 of the Act and should have permitted the authority to take the proceedings to its logical end. For having not done so, he submits that the conclusions drawn by the High Court were not based on true and correct facts of the case.

6. Having considered the matter in detail, we are of the opinion that the show cause notice issued by the petitioner(s)

under Section 54 of the Act did not contain the necessary details. There is no reference to any of the lapses which Mr. Nadkarni raised before us.

7. Under these circumstances, we are of the opinion that the decision of the High Court based on the notice dated 01.02.2019 cannot be interfered with.

8. While dismissing the Special Leave Petition, we permit the petitioner-Corporation to initiate such action as may be permissible or necessary in law and in such a case, the dismissal of the Special Leave Petition will have no bearing on such action. Equally, our order will have no bearing on any other proceedings that may have been initiated against the respondents.

9. With these observations, the Special Leave Petition is disposed of.

10. Pending application(s), if any, shall stand disposed of.

(INDU MARWAH)
AR-cum-PS

(NIDHI WASON)
COURT MASTER (NSH)