

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

CIVIL REVN. APPLICATION NO. 251 OF 2009

1. Maharashtra Industrial Development Corporation,
through its Chief Executive Officer
having office at M.I.D.C., 'Udyog Sarathi'
Mahakali Caves Road, Andheri (E),
Mumbai – 400 093.

2. The Executive Engineer,
MIDC Divn. No.7, MIDC,
Wagle Estate, Thane – 400 604.

3. Deputy Engineer, MIDC Marol,
Sub-Divn. Marol, Mumbai – 400 093.

... Applicants

v/s

1. Savita Vishnu Naik,
wd/o Vishnu Laxman Naik,
3/3, Ambre Chawl, Amboli Hill,
Caesar Rd., Andheri (W), Mumbai-58.

2. Sadanand Vishnu Naik,
2/6, Natraj Sadan, New Shyam Nagar,
Jogeshwari (E), Mumbai – 60.

3. Gauri Jayanand Vargaonkar,
MIDC, At-Post Kudal, Tal.Sawantwadi,
Dist. Sindhudurg.

4. Rajesh Vishnu Naik,
3/3 Ambre Chawl, Amboli Hill, Caesar Rd.,
Andheri (W), Mumbai – 58.

5. Mansi Parikshit Surve,
C/o. 3/3, Ambre Chawl, Amboli Hill,
Caesar Rd., Andheri (W), Mumbai – 58.

6. Archana Milind Mayekar,
1/6, shankar Kadam Chawl,
Vishnu Laxman Sawant Marg, Bhardawadi,
Andheri (W), Mumbai – 400 058. ... Respondents

Mr.P.P.Chavan along with Ravindra Chile i/by M/s.Navdeep Vora & Associates for the applicants.

Mr.K.A. Bhatia along with S.M.Sharma i/by M.P. Vashi & Associates for Resp. Nos.1 to 6.

Coram: N.M. Jamdar, J.

Dated: 6 October 2016

ORAL JUDGMENT:

This Revision Application is filed by the Maharashtra Industrial Development Corporation challenging the order passed by the learned City Civil Court Judge, Mumbai, dated 2 August 2008 decreeing the suit filed under Section 6 of the Specific Relief Act, directing that the possession of the Respondents be restored.

2 Respondents filed a Suit No.4693 of 2001 impleading the Maharashtra Industrial Development Corporation, its Executive Engineer and the Deputy Engineer, as party Defendants. The suit was filed under Section 6 of the Specific Reliefs Act. The suit was in

respect of Plot No.AM-14, Road No.16. Plot No.102 situated in the Industrial Estate at Marol, Andheri, Mumbai. It was the contention of the Respondent/Plaintiff that the Respondent/Plaintiff was carrying on business prior to October 1992. Electric supply was given by the Applicant Corporation to the Respondent/Plaintiff and he was paying the charges regularly. It was the case of the Respondent that on 10 July 1997, notice was issued by Defendant No.3 to the Respondent/Plaintiff questioning the construction activities of the Respondent/Plaintiff. Another notice of 19 November 1995 was issued. It was contended that, all of a sudden on 26 July 2001, the Applicant Corporation started carrying out drive of demolition and the structure in question was demolished and the Respondent/Plaintiff was dispossessed some time around 1 August 2001. It was contended that this action of the Corporation was without following due process of law. Accordingly, the relief of restoration of possession under Section 6 of the Specific Relief Act was sought.

3 The Applicant Corporation filed written statement and contended that various orders were passed by the Division Bench of this court in Public Interest Litigation No.91 of 2000 for removal of encroachments and road widening in the Marol industrial area. It was contended that the Respondents have encroached and constructed unauthorized constructions in the suit plot and inspite of notice dated 10 July 1997 and 19 November 1999, the structures were not

removed, neither any permission or sanctioned plan was produced and, therefore, the demolition was carried out. Accordingly, the Applicant Corporation resisted the prayers sought for by the Respondent/Plaintiff.

4 The learned City Civil Court Judge, after hearing both sides, came to the conclusion that the Applicant Corporation did not follow the procedure laid down under the Bombay Government Premises (Eviction) Act, which has been made applicable to the Applicant Corporation and since due process of law was not followed the suit filed by the Respondent/ Plaintiff was required to be decreed, and accordingly by the impugned order it was so decreed.

5 I have heard Mr.Chavan, learned counsel for the Applicants and Mr.Bhatia, learned counsel for the Respondents.

6 The fact that notices were issued to the Respondent/Plaintiff on 10 July 1997 and 19 November 1999 calling upon the Respondent/ Plaintiff to show cause as regard the legality of the structure, is not in dispute. The suit having been instituted under Section 6 of the Specific Relief Act, the short question that arose for consideration was, whether the Applicant Corporation followed the due process of law. Perusal of the impugned order would show that the learned City Civil Court Judge, after recording the fact that notices were issued, has straightway gone by the provisions under the Bombay

Government Premises (Eviction) Act, 1955 and held that the procedure laid down under Section 4 of the Act was not followed.

7 The Applicant Corporation has been designated as Special Planning authority by virtue of Section 40 (1)(a) of the Maharashtra Regional Town Planning Act, 1966 (M.R.T.P. Act). The Applicant Corporation is a special Planning Authority for the industrial area where the suit plot situated. Section 40 (1)(a) reads thus :

'40. Special Planning Authority for developing certain notified areas: (1) The State Government may, by notification in the Official Gazette for any undeveloped area specified in the notification in this Act referred to as 'the notified area' either -

(a) constitute an authority consisting of a Chairman, a Vice Chairman, a member of the Maharashtra Legislative Assembly representing the notified area, one member representing the municipal area, if any, included in the notified area, the Deputy Director of Town Planning, and the Executive Engineer, Public Health Works Division, each having jurisdiction over the notified area, and an officer not below the rank of an Assistant Collector.'

It is also not in dispute that the suit plot falls in the notified area. As a Planning Authority, the Applicant Corporation is vested with the power to remove unauthorized constructions.

8 Section 53 of the M.R.T.P. Act lays down that, when a Planning Authority notices development of the land contrary to the planning

norms, it is empowered to issue a show cause notice and indicating the subsequent steps to be taken. Sub-section (3) provides for steps to be taken by any person aggrieved by the notice to apply for permission to retention of works or such other requests. The provisions of the M.R.T.P. Act contemplates that, if the notice is not replied to or sufficient cause is not shown, the Planning Authority can proceed to take such steps for removal of the offending structure. This power of the Applicant Corporation as a Planning Authority is no manner affected by the provisions of the Bombay Government Premises (Eviction) Act, which operates in completely different context. The notices which were issued to the Respondents were issued by the Applicant Corporation as a Special Planning Authority and it called upon the Respondents to furnish an approved plan for the construction activity. Therefore, the Applicant Corporation, by issuing notices was exercising its function as a Special Planning Authority under Section 40(1)(a) and was proceeding as per Section 53 of the M.R.T.P. Act of 1966. Perusal of the written arguments filed in the City Civil Court, which are placed on record by the Respondents indicates that the argument regarding applicability of the Bombay Government Premises (Eviction) Act was not even urged and that the learned Civil Judge *suo moto* considered these provisions.

9 Apart from this position, whether the provisions of the Bombay Government Premises (Eviction) Act, 1955, are applicable to the facts

of this case also need to be considered. Section 29 of the Maharashtra Industrial Development Act, 1961 (M.I.D.C. Act), reads as under :

'29. Application of Bombay Government Premises (Eviction) Act, 1955, to Corporation premises:

(1) The State Government may. By notification in the Official Gazette provided from such date as is stated therein that the Bombay Government Premises (Eviction Act, 1955, shall apply to premises belonging to, vesting in, or leased by, the Corporation as that Act applies in relation to Government premises, but subject to the provisions of sub-section (2).

(2) On a notification being issued under sub-section (1), the aforesaid Act and the rules made thereunder shall apply to premises of the Corporation with the following modifications, that is to say:

(a) the State Government shall appoint an officer who is holding or has held office whether under the Government or the Corporation which in the opinion of the State Government is not lower in rank than that of a Deputy Collector or an Executive Engineer, to be the competent authority for the purpose of the aforesaid Act and one or more officers may be appointed as competent authorities for different areas or for the same area.

(b) references to 'Government premises' in that Act and those rules shall be deemed to be references to premises of the Corporation, and references to 'the State Government' in Sections 4, 5, 6 and 9 shall be deemed to be references to the Corporation.'

In respect of the 'premises', the provisions of Bombay Government

Premises (Eviction) Act, would apply. 'Premises' have been defined in Section 2(j) of the M.I.D.C. Act. The functions and powers of the Applicant Corporation are enumerated in Sections 14 and 15. M.I.D.C. Act is enacted to secure the orderly establishment in industrial areas in the State of Maharashtra. In furtherance of this object, the Applicant Corporation is vested with various functions and powers to promote orderly growth of development of industries in the State of Maharashtra. It is in furtherance of these functions that a power has been given to the Applicant Corporation for summary eviction by resorting to the provisions of the Bombay Government Premises (Eviction) Act. This power operates in a completely different sphere than the power of the Applicant Corporation to act as a Planning Authority for the designated area. Section 29 of the M.I.D.C. Act makes a reference to Section 4 of the Bombay Government Premises (Eviction) Act. Section 4 confers a power to the competent authority to evict a person who is occupying the Government premises.

10 The power of the Applicant Corporation to evict a person from the premises, is different than the power of the Applicant to regulate the construction in a designated area as a Planning Authority. Since the notices clearly indicated that the power as a Special Planning Authority was invoked, there was no occasion for the learned Judge to *suo moto* considering the applicability of the provisions of the Bombay Government Premises (Eviction) Act. Even assuming such

exercise was permissible, the learned Judge has not considered the provisions of Section 40(1)(a) and Section 53 of the M.R.T.P. Act. The entire basis of the impugned order therefore that the procedure under Section 29 of Maharashtra Industrial Development Act read with Section 4 of the Bombay Government Premises (Eviction) Act, was not followed, is incorrect.

11 Even otherwise, an adequate opportunity was given to the Respondent/Plaintiff to show cause regarding the validity of the structure and since the Respondent/Plaintiff did not show any authorization or approved plans, the Applicant Corporation as a Special Planning Authority in furtherance of its duty, carried out the demolition. The learned counsel for the Respondents relied upon the decision of the learned Single Judge of Rajasthan High Court in the case of *Chandra and Co. v/s State of Rajasthan*¹, to contend that the State is not free to act in any manner to dispossess any person otherwise than in due course of law and provisions of Public Premises Act needs to be scrupulously followed. As far as the proposition of law is concerned, it cannot be disputed but however in the facts of the present case the action has been taken by the Applicant Corporation as a Special Planning Authority was as per law.

12 It was then contended by the learned counsel for the Respondent/Plaintiff that the Applicant Corporation could have

¹ (1980) 0 Supreme (Raj) 144.

regularize the structure upon charging such charges as may be permissible. This submission also cannot be accepted. The regularization of unauthorized structure cannot be claimed as a matter of right and there is no mandate on the Special Planning Authority to regularize the unauthorized structure.

13 Therefore, inspite of notices if no sanctioned plans were produced and the structure is demolished, it cannot be said that the procedure adopted by the Applicant Corporation was against any provision of law. Apart from this position, due process of law connotes an adequate opportunity of hearing, which was given to the Respondents twice, which the Respondents failed to avail of.

14 In conclusion, the order passed by the learned City Civil Court Judge directing the Applicant Corporation to restore the possession of the Respondents who had constructed an unauthorized construction, on the ground that due process was not followed, is required to be quashed and set aside and is accordingly quashed and set aside.

15 The civil revision application is allowed. No order as to costs.

(N. M. Jamdar, J.)