

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO. 270 OF 2010
IN
WRIT PETITION NO.1977 OF 2006**

**1 Ankush M Bhabal)
Shivshankar Nagar Salt Pan Road)
Wadala (e) Mumbai 400 037)**

**2 Smt. Laxmi Maruti Bhabal)
Widow of late Shri Maruti Bhabal)
Residing at Room No.105,)
First floor, "A" Wing)
Swarganga Apartments Sector-18)
Kamothe Khandeshwar)
Navi Mumbai 410 209)**

**3 Vijay Dattatraya Yeram)
A/90, Shastri Nagar, Sion Koliwada)
Mumbai 400 022)**

**4 Sadanlal Mahabir Mali)
Silver Dukes B No. Room 203)
Prabhadevi, Hathiskar Marg,)
Mumbai 400025)**

**5 Suryakant Laxman Bhabal)
Shivshankar Nagar Salt Pan Road)
Wadala (e) Mumbai 400 037)**

**6 Madhukar Atmaram Lakeshri)
Baramden Rami Chawl)
Jawahar Nagar, Sai Baba Road,)
Khat (E) Mumbai 400051)**

**7 Naseer Abbas Mullah)
Municipal Pathra Chawl)
Chawl No.43, Room No.4)
Byculla Mumbai 400011)**

**8 Smt Pratikha Prakash Ghavale)
Widow of late Shri Praksh Ghavale)
Lokmanya Co-operative Housing)**

Society, Plot No.526, Room No.22)
Charkop, Kandivali (West),)
Mumbai 400067)

9 Smt. Shaila Dattatray Kharkar)
widow of late Shri Dattatray Kharkar)
G-8(96) Hiraji Baug Wadi)
Chawl No.8, Jakeria Bunder Road,)
Sewri, Mumbai 400015)

..Appellants
(original Respondents)

versus

1 M/s. Agarwal Traders)
proprietor of Navyug Processes)
12, D.D. Sathe Marg, Girgaum)
Mumbai 400 004)

2(i) Rajeev Banwarilal Jalan)
703, Shanti Heights,)
G. D. Ambedkar Raod, Mumbai-31)

(ii) Mrs. Manjuladevi V. Roongta)
42, Sonarica, 33-A, Pedder Road)
Mumbai 400 026)

3 Manoj Banwarilal Jalan)
Legal heir, 12,D. D. Sathe Marg,)
Girgaum Mumbai 400 004)

..Respondents

Mr.Mahesh Shukla for the Appellants

Mr. S. K. Talsania Senior Advocate a/w Mr. Kiran Bapat i/b Desai & Desai
Associates for the Respondent Nos.1 and 2

CORAM :R. M. SAVANT, &
SARANG V KOTWAL, JJ
DATE : 22nd NOVEMBER, 2017

ORAL JUDGMENT (PER R.M.SAVANT J.)

1 The above Appeal challenges the judgment and order dated
22-7-2008 passed by a Learned Single Judge of this Court S. A. Bobde J., (as

His Lordship then was). By the said order, the above Writ Petition No.1977 of 2006 came to be allowed and resultantly the judgment and order dated 6-6-2006 holding the Respondents herein who were the Petitioners guilty of unfair labour practices under Item 6 of Schedule II and Item 9 of Schedule IV of the MRTU & PULP Act, 1971, came to be set aside.

2 The factual martix involved in the above Appeal can in brief be stated thus. The Appellants herein are the workers who were working at the relevant time with the Respondent No.1. The Respondent No.1 was a partnership firm engaged in the business of job work of calendaring and packaging of cloth. The Respondent No.1 had its factory at Sewri, Mumbai. The land on which the factory of the Respondent No.1 was situated was a subject matter of acquisition for the purposes of the Bombay Electric Supply Undertaking (BEST for short). The said acquisition, it seems was completed in the year 1993 and as a consequence of the acquisition the factory of the Respondent No.1 was demolished on 13-7-1993.

3 The Respondent No.1 issued a notice on 12-7-1993 of the intended lock out from 26-7-1993 for the acts of certain workmen which according to the Respondent No.1 was adversely affecting the working of the Respondent No.1. However, before the intended lock out could take place on 26-7-1993, the structure wherein the factory of the Respondent No.1 was

situated, came to be demolished on 13-7-1993 by the BEST authorities. It is upon this that the Respondent No.1 offered the dues to the workmen on account of its closure. It seems that some of the workmen accepted the dues whilst others did not. In view of the fact that a closure had taken place on account of the events which have transpired after notice dated 12-7-1993 was issued by the Respondent No.1, the Appellants herein a good 7 years after the said closure on 30-8-2000 filed a Complaint purporting to espouse their own cause as also cause of the other workmen of the Respondent No.1 totalling in number 76. The said Complaint was filed invoking unfair labour practice under Item 6 of Schedule II and Item 9 of Schedule IV of the MRTU & PULP Act, 1971. The gravamen of the case of the complainants in the said complaint was that the closure effected by the Respondent No.1 is in the guise of lock out and was therefore in contravention of the Section 25(O) of the Industrial Disputes Act. It was therefore the case of the complainants that the said closure is illegal and that the contract of employment continues and therefore the Respondent No.1 was liable to pay wages till the contract of employment was terminated. It seems that since there was a delay of about 7 years in filing the complaint, the Industrial Court condoned the delay and set upon to adjudicate the said complaint.

4 The Respondent No.1 herein filed its Written Statement and placed on record the factum of the closure taking place in view of the

acquisition of the land and the demolition of the structure on 13-7-1993. It was the case of the Respondent No.1 in the Written Statement that it had offered to pay closure compensation to the workmen some of whom had accepted and some of whom had refused to do so.

5 The Industrial Court on the basis of the pleadings framed issues amongst which was the issue of whether the complainants prove that the Respondents have committed unfair labour practice under Item 6 of Schedule II and Item 9 of Schedule IV of the MRTU & PULP Act, 1971 and to what relief the complainants were entitled to.

The parties adduced evidence in support of their respective assertions made vide their pleadings in the complaint as well the Written Statement. The Industrial Court on the basis of the material on record came to a conclusion that though the Respondent No.1 was very much aware of the acquisition of the land which was going on since 1986 and was aware of the fact that the structure was likely to be demolished, had not informed the workmen of the same. The Industrial Court therefore was of the view that the said conduct of the Respondent No.1 shows that the notice of lock out dated 12-7-1993 was a ruse adopted by it. The Industrial Court observed that since the contract of employment has not been terminated by the Respondent No.1, the same continues and could only come to an end either on account of termination or retirement. The Industrial Court was therefore of the view that

the Respondent No.1 was liable to pay wages to the workmen from 12-7-1993 till contracts of employment with the individual workmen come to an end. The Industrial Court accordingly recorded a finding that the Respondent No.1 had committed an unfair labour practices under Item 6 of Schedule II and Item 9 of Schedule IV of the MRTU & PULP Act, 1971. The Industrial Court resultantly directed the payment of wages and legal dues to the complainants and the other workmen concerned till the subsistence of the contract of employment.

6 The Respondent No.1 aggrieved by the said judgment and order dated 6-6-2006 passed by the Industrial Court challenged the same by way of filing a Writ Petition in this Court being Writ Petition No.1977 of 2006. As indicated above the said Writ Petition came to be allowed by a Learned Single Judge of this Court by judgment and order dated 22-7-2008. The sum and substance of the reasoning of the Learned Single Judge whilst allowing the Writ Petition was the finding recorded by the Learned Single Judge that the closure of the establishment of the Respondent No.1 has taken place on account of the acquisition of the land of the Respondent No.1 and consequently demolition of the factory building of the Respondent No.1 and not on account of any voluntary act pursuant to the notice dated 12-7-1993. The Learned Single Judge was of the view that the applicability of Section 25(O) was also in question as there was no material placed on record to

establish the existence of more than 76 workmen and therefore the provisions of Chapter VB which include Section 25 of the Industrial Disputes Act was not applicable. The Learned Single Judge has however, molded the reliefs by directing the Respondent No.1 to pay the closure compensation to the workmen and also to pay interest @12% p.a. from 13-7-1993 till the date the amount is deposited by them before the Industrial Court, as directed by the impugned judgment and order. As indicated above, it is the said judgment and order dated 22-7-2008 passed by the Learned Single Judge which is taken exception to by way of the above Appeal.

7 Heard the Learned Counsel for the parties.

8 The Learned Counsel appearing on behalf of the Appellants Mr. Shukla would seeking to re-urge the contentions which were urged before the Learned Single Judge namely that since there was no cessation of the contract of employment, the said contract continued and therefore the complainants were entitled to wages till the subsistence of their employment. The Learned Counsel would submit that the workmen were kept in the dark in so far as the acquisition is concerned and therefore in view of the demolition which has taken place on 13-7-1993 they have been left in the lurch by the Respondent No.1 on account of the fact that they could not take any steps to protect their employment. It was also the submission of Mr. Shukla that the Respondent

No.1 being aware of the acquisition being adopted in respect of the land of the Respondent No.1 ought to have made arrangements to shift their business activities to some other place.

9 Per contra, the Learned Senior Counsel Mr. Talsania appearing for the Respondents would support the impugned order passed by the Learned Single Judge. The Learned Senior Counsel would contend that the closure of the Respondent No.1 has taken place on account of the demolition of the factory premises which has taken place pursuant to the acquisition of the property of the Respondent No.1 and therefore the closure can be said to be not on account of any voluntary act of the Respondent No.1 but by operation of law. The Learned Senior Counsel would submit that the Industrial Court had erred in recording a finding that the contract of employment subsist notwithstanding the fact that the factory premises have been demolished pursuant to the acquisition which has resulted in the closure and thereby bringing to an end the contract of employment.

10 We have heard the Learned Counsel for the parties and have considered the rival contentions. The question that is posed is whether the closure which has taken place of the Respondent No.1 can be termed to be illegal so as to covered by under Item 6 of Schedule II and Item 9 of Schedule IV of the MRTU & PULP Act, 1971. It is in the context of the said issue that a

few facts would have to be revisited. The fact that the property of the Respondent No.1 was under acquisition for the public purpose of the BEST, cannot be disputed. The said acquisition seems to have commenced in the year 1986 and seems to have culminated in the year 1993. It is just before the culmination of the acquisition of proceedings that notice of lock out came to be issued on 12-7-1993s by the Respondent No.1 and the intended lock out was to take place on 26-7-1993. However, there is no dispute about the fact that on 13-7-1993 the structure of the factory of the Respondent No.1 came to be demolished by the acquiring body. It is therefore on account of the demolition of the factory of the Respondent No.1 pursuant to the acquisition proceedings that the closure in effect has taken place. The Learned Single Judge was therefore right in coming to a conclusion that the closure had taken place on account of the acquisition of the premises and the demolition of the factory of the Respondent No.1. The close proximity of the notice of lock out of the demolition on 13-7-1993 can be said to be a coincident as otherwise the only corollary to the acquisition of a property is that the property vests in the State free from all encumbrances.

11 Now coming to the contentions of the Learned Counsel appearing on behalf of the Appellants Mr. Shukla that the workmen were not aware of the acquisition proceedings and that on account of the demolition of the acquisition proceedings that they were left in the lurch.

12 In so far as the said aspect is concerned, it is required to be noted that the Sarva Shramik Sangh who was espousing the cause of workmen had filed a Writ Petition No.1106 of 1993 in this Court challenging the said acquisition proceedings. In the context of the above Appeal prayer clauses (B) and (C) of the said Petition are material and which are produced hereinunder:

(B) To hold and declare that the decision of the Respondent No.3 to evict the Respondents 4 and 5 would resulting violation of Section 25-O of the Industrial Disputes Act, 1947.

(C) To restrain the Respondents 4 and 5 from closing down the undertaking and factory in violation of Section 25-O of the Industrial Disputes Act, 1947 and without the permission of the State of Maharashtra under the said provisions.

13 Hence the Petitioner Sarva Shramik Sangh which was a union was very well aware of the consequences of the acquisition and had therefore sought reliefs in the context of Section 25(O) of the Industrial Disputes Act. Hence the filing of the said Writ Petition by the said Sarva Shramik Sangh and the reliefs prayed therein belies the case of the Appellants herein that they were not aware of the acquisition proceedings. In our view, therefore, the situation which has developed was such that it was beyond the control of either the Respondent No.1 or the workmen, in view of the acquisition of the land and demolition of the factory premises of the Respondent No.1. The

Learned Single Judge was therefore right in coming to a conclusion that the severance of contract of employment had occurred on account of closure which has taken place pursuant to the acquisition of the land and demolition of the factory premises. In our view therefore, there is no merit in the submission that the notice of lock out was a ruse adopted by the Respondent No.1 to close down the establishment. If that be so there is no question of the Respondents having committed any unfair labour practice with the meaning of Item 6 of Schedule II and Item 9 of Schedule IV of the MRTU & PULP Act, 1971.

14 We are informed at the bar by the Learned Senior Counsel Mr. Talsania that the amounts as directed by the Learned Single Judge have been deposited in the Industrial Court which amounts has also been withdrawn by the concerned workmen. The said fact is not disputed by the Learned Counsel Mr. Shukla appearing for the Appellants / workmen. In that view of the matter, there is no merit in the above Appeal which to accordingly stand dismissed.

[SARANG V KOTWAL, J]

[R.M.SAVANT, J]