

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1151 OF 2002

1. Indian Express Newspapers (Bombay)
Ltd., a Company incorporated under
the provisions of the Companies Act,
1956, having its Registered Office at
Express Towers, Nariman Point,
Mumbai – 400 021.

2. Mr. Vivek Goenka
of Mumbai, Indian Inhabitant, residing
at Pent House, Express Towers,
Nariman Point, Mumbai-400 021.

.... Petitioners

- Versus -

1. The State of Maharashtra

2. The Collector, Mumbai City,
having his office at Old Customs House,
Sahid Bhagat Singh Road, Fort,
Mumbai – 400 001.

3. The Sub Registrar, Mumbai City,
having his office at Old Customs House,
Sahid Bhagat Singh Road, Fort,
Mumbai – 400 001.

4. Housing Development Finance
Corporation Ltd., a Company incorporated
under the provisions of the Companies
Act, 1956, having its Registered Office
at Ramon House, H.T. Parekh Marg,
169, Backbay Reclamation,
Mumbai – 400 020.

.... Respondents

Mr. Shyam Mehta, Senior Advocate, with Dr. Abhinav Chandrachud & Mr. Sufiyan Shaikh i/by Ms Poorvi Kamani for the Petitioners.

Mr. Ashutosh Kumbhakoni, Advocate General, with Ms Geeta Shastri, Addl. Government Pleader, for the Respondents.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : AUGUST 14, 2018

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.):

1. After this writ petition was heard for some time on prior occasion and even today, the parties have agreed that it can be disposed of without assigning reasons but by the following order:-

“(1) The Petitioner No.1 agreed to construct a building vide agreement for lease dated 2nd September 1963, on the piece of land bearing plot numbers 219-220 and 243-244 from Block III of the Backbay Reclamation, admeasuring about 7.078 square yards (hereinafter referred to as 'the said land' for the sake of brevity) owned by the

Respondent No.1, State. The construction of the said building known as 'Express Towers' was completed and a completion certificate in that regard has been issued on 06th May 1972.

(2) A registered Lease dated 8th December 1972 has been executed by the Respondent No.1 in favour of the Petitioner No.1, in respect of the land and building 'Express Towers', on the terms and conditions stipulated therein, for a period of 99 years.

(3) The Petitioner No.1 agreed to lease the entire 5th floor of the aforesaid building Express Towers, admeasuring 14,400 sq.ft. to the Respondent No.4, for the unexpired period of the lease dated 08th December 1972, for a onetime premium of Rs.24,48,00,000/- and a rent of Rupee one per month. Accordingly, a Memorandum of Understanding was executed on 22nd February 2001.

(4) The Petitioner No.1 vide letter dated 14th March 2001 sought for a No Objection Certificate from the Respondent No.2 to enable the Petitioner No.1 to execute and register a Lease Deed in favour of the Respondent No.4.

(5) The Petitioner No.1 has executed an undertaking dated 27th September 2001 to the effect that the Petitioner No.1 is ready to pay license fee/premium etc. a copy of which is at Exhibit K-2 of the present Petition.

(6) In view of the Government Resolution dated 09th July 1999 and 23rd November 2001, the Respondent No.1 has issued an Order dated 27th September 2001, granting conditional permission, for execution of the aforesaid lease by the Petitioner No.1, in favour of the Respondent No.4, which is produced at Exhibit-I. Accordingly the Respondent No.2 has granted a conditional permission to the Petitioner No.1 dated 27th September 2001, which is produced as Exhibit-H.

(7) The Petitioners by the present petition have impugned the Government Resolutions dated 09th July 1999 and 23rd November 2001. The Petitioners have also impugned the aforesaid orders issued by the Respondent Nos.1 and 2 both dated 27th September 2001, whereby conditions have been imposed while granting the aforesaid No Objection Certificate, to the Petitioners, for leasing out the 05th

floor premises to the Respondent No.4. The Petitioners have also challenged the order of the Respondent No.2 dated 07th February 2002, whereby the license fee is revised on the basis of the aforesaid Government Resolution dated 23rd November 2001.

(8) This Hon'ble Court vide its Order dated 31st July 2002 has admitted present Petition and has granted interim relief, which is operating till this date. In terms of the said Order the operation of the aforesaid Letters/Orders dated 07th February 2002 and 31st May 2002 have been stayed, subject to conditions specified therein, which is self-explanatory.”

2. The parties have stated before us that during the pendency of this writ petition, the Maharashtra Land Revenue Code, 1966 has been amended, and Section 37A introduced therein and a proviso to existing Section 295 was added with retrospective effect.

3. The issue pertaining to their legality and validity was considered by this very Bench in a group of Writ Petitions and a Judgment has been delivered on 3-5-2018 **{O.S. Writ Petition**

(L) No.122 of 2018 with Notice of Motion No.45 of 2018 (Hindustan Unilever Limited & Another v/s. State of Maharashtra & Others)}. In the light of these subsequent developments, including the amendments to the law, respondent Nos.1 and 2 are intending to enforce the law and not the impugned Circulars/Government Resolutions. However, it is stated that before the law is enforced and applied to the petitioners' case, the Collector, Mumbai City has agreed to grant an opportunity of personal hearing to the petitioners in relation to the demands of respondent Nos.1 & 2 and pass fresh orders in accordance with law. Once such fresh orders are going to be passed, assigning reasons, and there being a provision of multiple appeals in the Maharashtra Land Revenue Code, 1966, this writ petition need not be kept pending.

4. Needless to clarify that once the law is amended, these two Government Resolutions could not have been enforced for they were mere executive fiats and not statutory amendments. The interim arrangements during the pendency of this petition shall continue till respondent No.2 passes fresh

orders, but that is strictly without prejudice to the rights and contentions of the petitioners. In the event the fresh order is adverse to the interest of the petitioners, same shall not be executed for a period of four weeks from the date of its communication to the petitioners.

5. Rule is made absolute in the above terms with no order as to costs.

(SMT. BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI, J.)

**Suresh
Jagdish
Sajnawat** Digitally signed
by Suresh
Jagdish Sajnawat
Date: 2018.08.23
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