

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

WRIT PETITION (LDG.) NO. 565 OF 2018

Municipal Corporation of Greater Mumbai. ... Petitioner.
V/s.
Mr.Gaurav V. Nevatia and others. ... Respondents.

WITH
WRIT PETITION (LDG.) NO. 720 OF 2018

Madhuli Co-operative Housing Society Ltd. ... Petitioner.
V/s.
Mr.Gaurav V. Nevatia and others. ... Respondents.

Mr.R.S.Apte, Senior Advocate with Mr.Anant Vadgaonkar with
Ms.Vandana Mahadik for the petitioner in WPL-565/18 and for
respondent No.7 in WPL-720/18.

Mr.V.V.Tulzapurkar, Senior Advocate with Mr.Parag Kadi and
Ms.Preena Salgia i/b. Doijode Associates for the petitioners in
WPL-720/18 and for respondent No.3 in WPL-565/18.

Mr.Kapil Shetye for respondent Nos.1 and 2 in both petitions.

Mr.T.N.Subramaniam, Senior Advocate with Mr.Rishir Daulat,
Ms.Teresa Daulat and Ms.Geetanjali Joshi i/b. TRD Associates
for respondent No.5 in WPL-565/18 and for respondent No.8
in WPL-720/18.

Mr.Amit Shastri, AGP for respondent No.8 in both petitions.

CORAM : A.S.OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 6th April 2018.

P.C.:

In both the petitions, we issue rule. The advocates representing the respondents waive service. Forthwith taken up for final hearing.

2. In Writ Petition (Ldg.) No.565/2018 filed by the Municipal Corporation of Greater Mumbai, the challenge is to the order dated 31st January 2018 passed by the National Green Tribunal (for short “NGT”) in Execution Application No.16/2017 arising out of Original Application No.54/2016.

3. In Original Application No.54/2016, an order was made by the NGT on 28th October 2016 (Exhibit-C to the petition) by which the following directions were issued:

“..... We, therefore, direct:

1. The Applicants and Respondent No.1 and 2 shall appear before the Respondent No.4-MCZMA at about 11.00 a.m. on 17th November 2016.

2. The Respondent Nos.1 and 2 waive service of Show Cause Notice of the complaint dated 5th February 2016. The Applicants and Respondent No.1 and 2 on the date of their appearance before the MCZMA-Respondent No.4 shall file all the relevant documents/material in support of their respective cases.

3. Respondent No.4-MCZMA shall give hearing to the Applicants and Respondent No.1 and 2 and shall take decision or pass order in accordance with Law within four (4) weeks thereafter.

4. Compliance Report shall be filed by Respondent NO.4-MCZMA within a week thereafter.

5. Copies of the decision taken shall be communicated to the Applicants as well as Respondent Nos.1 and 2.

Application No.54/2016 thus stands disposed of with no order as to costs.”

It is pointed out in the petition that hearing was conducted before MCZMA on 17th November 2016. Execution Application No.16/2017 has been filed by the first and second respondents for the execution of the aforesaid order dated 28th October 2016. On the said execution application, there were two orders passed by the NGT. First one was on 7th November 2017 and the second one was on 31st January 2018 which is impugned in Writ Petition (Ldg.) No.565/2018.

4. In Writ Petition (Ldg.) No.720/2018, apart from the challenge to the order dated 31st January 2018 in Execution Application No.16/2017, the petitioner has impugned the order dated 28th October 2016 passed in Original Application No.54/2016.

5. In Writ Petition (Ldg.) No.565/2018, a detailed order was passed by the Division Bench of this Court on 22nd February 2018 by

which execution and operation of the order dated 31st January 2018 was stayed.

6. The learned counsel appearing for the first and second respondents who are applicants before the NGT in Execution Application No.16/2017 concedes that the order dated 31st January 2018 could not have been passed by a single Member of the NGT and, therefore, the said respondents have no objection for setting aside the said order dated 31st January 2018 on that ground. We agree with the submission that the single Member of the NGT could not have passed the order dated 31st January 2018 and, therefore, the said order will have to be set aside only on that ground. In Writ Petition (Ldg.) No.720/2018, there is also a challenge to the order dated 28th October 2016 on the basis of which the execution application was filed by the first and second respondents. We have already quoted the order dated 28th October 2016 passed by the NGT in Original Application No.54/2016 by which the applicants in the said application and writ petitioner in Writ Petition (Ldg.) No.720/2018 and one Prakash Khubchandani were ordered to appear before before MCZMA. The said order records that the petitioner in Writ Petition (Ldg.) No.720/2018 and the said Khubchandani waived service of show cause notice of the complaint dated 5th December 2016. The respondent No.4- MCZMA before the NGT was directed to give hearing and to pass an order in accordance with law. In our view, it is too late in the day to challenge the said order dated 28th October 2016 by filing Writ Petition (Ldg.) No.720/2018 on 1st March 2018. If, according to the petitioner in Writ Petition (Ldg.) No.720/2018, the said order is nullity or is not

capable of being executed or implemented, the said objection will have to be raised by the petitioner therein in the pending execution application.

7. Hence, we dispose of both the petitions by passing the following order:

(i) The order dated 31st January 2018 passed by the NGT in Execution Application No.16/2017 arising out of Original Application No.54/2016 is hereby quashed and set aside on the ground that the said order could not have been made by the Member of the NGT sitting singly;

(ii) We make it clear that we have not made any adjudication on the issue of legality and maintainability of the Execution Application No.16/2017 and all the contentions of the parties to the petitions in that behalf are kept open. We also make it clear that the contention raised by the petitioner in Writ Petition (Ldg.) No.720/2018 that the order dated 28th October 2016 is nullity and is not capable of being executed and implemented is also kept open which will be decided by the NGT in the pending execution application.

(iii) Rule in both petitions is made partly absolute on the above terms.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)