

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

***APPEAL FROM ORDER NO.179 OF 2021
WITH
INTERIM APPLICATION NO.1799 OF 2021***

The Sagar Shopping Center Premises
CHSL and Others

...Appellants

Vs

Brihanmumbai Mahanagar Palika
and Anr.

... Respondents

...

Mr. Milan Desai for the Applicants/Appellants.

Mr. N.V.Walawalkar, Senior Advocate with Mr. Rajendra Sirsikar
for Respondent No.1-MCGM.

Mr. Girish Godbole i/by Ms. Shivani Samel for Respondent No.2.

***CORAM : SANDEEP K. SHINDE J.
RESERVED ON : JANUARY 13, 2022.
PRONOUNCED ON: JANUARY 19, 2022.***

P.C. :

This Appeal under Order 43 Rule 1(r) read with Section 104 of the Code of Civil Procedure, 1908 ('CPC' for short), assails, the order dated 2nd July, 2021 by, which the learned Judge, City Civil Court, Greater Bombay, declined to restrain the Mumbai Municipal Corporation of Greater Bombay, their servants and agents from taking action pursuant to the notices issued under Section 299 of the Mumbai Municipal Corporation Act, 1888 ('MMC' Act for

short) concerning widening of the suit road, at Andheri, Mumbai.

2 Appeal is preferred by the Plaintiffs.

3 Heard Mr. Milan Desai, the learned counsel for the appellants, Mr. N.V.Walawalkar, the learned Senior Counsel for the Corporation and Mr. Girish Godbole, the learned Senior counsel for the Respondent No.2.

4 The only question, required to be answered is, “whether the impugned order requires interference ?”

Factual Matrix:

5 The State of Maharashtra in exercise of the powers under Section 37(1AA)(c) of the Maharashtra Regional and Town Planning Act, 1966 (‘MRTP Act’ for short), issued Notification, on 16th November, 2016 requiring the Municipal Corporation of Greater Bombay to convert all roads of width of less than 9.00 meters to 9.00 meters and above, as per site conditions, through MRTP Act or

MMC Act provisions. In pursuance thereto, the Deputy Chief Engineer [B.P.] W.S-I moved a proposal to sanction Regular Line of the street ('RL') by prescribing 9.15 meter wide regular line to the existing 6.10 meter wide road passing through the plot bearing CTS Nos.77, 78, 79, 80, 88, 89 and 90 of Village Andheri in K/West ward under Section 297(1)(a) of the MMC Act, 1888. Proposal was approved by the Chief Engineer (Development Plan) on 23rd May, 2019 and further by Municipal Commission on 10th June, 2019. Thereafter on 10th August, 2019 by Special Notice contemplated under Section 279(1)(b) (i) of the Act, people of an area through Assistant Commissioner K/West Ward were notified, the regular line of street. Admittedly, the notice dated 10th August, 2019 was not objected to by the plaintiffs. Corporation would claim that after following the due procedure contemplated under Chapter XI (Relating to construction, maintenance and improvement of public streets) notices were issued to the Plaintiffs dated 10th August, 2019 and 28th May, 2021 by which they were informed, that their certain lands (not occupied by buildings) forming part of the CTS 79,88 and 77A lies within the 9.15 meters wide regular line of the suit road and that Corporation, shall take

possession of such certain lands required for widening K.A.Patil Lane situated at Off Daud Bagh Road, Andheri (W) ('Suit Road' for short). Indisputably, the road alignment of intended widening was not in any manner affecting anyone of six buildings on both sides of the suit road, including that of plaintiffs. In spite of this fact, the appellants/plaintiffs instituted the Suit No.1126 of 2021 in June, 2021 to seek declaration that notices dated 10th August, 2019 and 28th May, 2021 issued under Section 299 of the MMC Act were illegal, arbitrary, discriminatory and without sanctity of law and be set aside. The suit proceeds to challenge these two notices only on the following grounds;

- (i) Length of the suit road is only 150 meters and there are six buildings; three on each side on the suit road. The width of the existing road is 6.1 meters. The Suit road is dead end and, therefore, there is no necessity to widen the suit road;
- (ii) There is no public interest in widening the suit road because except residents of six buildings, no other public is going to use suit road.
- (iii) While exercising power under Section 297 of the

MMC Act, the Corporation has not considered public interest.

(iv) Plaintiffs have bonafide reason to believe that after demolishing Geeta Building, owners thereof being defendant no.2 colluded with the Corporation for the purpose of widening of suit road so that M/s. Rompal Group (Developer/Defendant No.2) shall be enable to use more FSI and would get more profit in re-developing Geeta Building.

(v) That the Corporation is acting in collusion with the defendant no.2 for the purpose of pecuniary benefits of the defendant no.2.

(vi) Both the notices were issued with the malafide purpose.

6 Mr. Milan Desai, learned counsel for the appellants, would contend that for want of “Authority” of the Corporation, in terms of Clause (b) of Section (1) of Section 297 of the MMC Act, the Commissioner could not have prescribed Regular Line of the suit road for implementing directives of the State. He, therefore, submitted that

Commissioner's decision under Section 297 of the MMC Act being, illegal, for want of "authority", consequential notices under Section 299 of the MMC Act were illegal and arbitrary and thus, cannot be enforced. His next submission, was, in terms of proviso to sub-section 2 to Section 289 of the MMC Act, Commissioner cannot undertake widening of any public road, aggregate cost of which exceeds 10 Lakhs unless and until such Undertaking has been authorized by the Corporation. Mr. Desai would, therefore, submit that neither 'Undertaking' nor 'Authority' has been brought on record for consideration of the Court and thus, procedure contemplated under Chapter XI of the MMC Act for construction, maintenance and improvement of the public streets has not been adhered to, which, renders the decision of Commissioner to mark Regular Line of suit road was illegal. Mr Desai contended that the trial Court has ignored or overlooked the provisions of Chapter XI of the MMC Act, while examining the validity and correctness of the Commissioner's decision drawing the Regular Line of the Suit Road and therefore,

interference is called for in the impugned order.

7 Mr. Walawalkar, learned Senior Counsel for the Corporation, vehemently opposed these submissions, reason being, that the challenge to the impugned notices was not questioning, authority of Commissioner, to mark RL on the Suit Road but was founded only on the grounds that; it was malafide action; not in the public interest and the decision has been taken in the interest of the defendant no.3, who was undertaking the re-development project on CTS No.80. In the context of the facts of the case, Mr. Walawalkar submitted that challenge to the decision of the Municipal Commissioner, for want of Corporation's authority, cannot be entertained in these proceedings, firstly, for want of pleadings in the suit and challenge to decision being barred under Section 527(1)(b) of the MMC Act. Mr. Walawalkar argued that since plaintiffs have simply challenged notices issued under Section 299 of the MMC Act, in consequence of the decision to widen the road and that too on the ground of malafide acts, it was not necessary to

produce resolutions or orders to justify Commissioner's decision prescribing Regular Line of the street. Thus, Mr. Walawalkar submitted, non-production resolutions of the Corporation authorising Commissioner to prescribe RL *ipso-facto* would not render the decision of the Municipal Commissioner illegal. Mr. Walawalkar has taken me through the directives issued by the State of Maharashtra under Section 37(1AA)(c) of the MRTP Act; proposal moved by the Deputy Chief Engineer [B.P] W.S.-I and approvals/remarks of the authorities, which were considered by the Commissioner before exercising the powers under Section 297(1) of the MMC Act. Mr. Walawalkar further submitted, directives issued by the State were in the public interest and, therefore, appellants' contention that decision to widen the road was not in public interest but malafide and taken in the interest of defendant no.3 was not, well motivated. On these grounds, Mr. Walawalkar submits, no interference is called for in the impugned order.

8 Mr. Godbole, the learned counsel appearing for the respondent (Original Defendant No.3) would support the submissions of Mr. Walawalkar and would further contend that in the case in hand, authority of the Corporation was not required for prescribing Regular Line of the street. Mr. Godbole contended that the road alignment of the intended widening is not in any manner affecting plaintiffs' building, but only part of the land for which plaintiffs would be compensated in terms of Section 301 of the MMC Act, 1888 Mr. Godbole, further, argued that since appellants have not challenged, either decision of the Corporation and/or decision of the Municipal Commissioner prescribing the Regular Line of the suit road, a mere challenge to the consequential notices issued under Section 299 of the MMC Act was untenable. Mr. Godbole would contend that the documents like proposal moved by Deputy Chief Engineer, office notings, Special Notice all relating to widening of public streets, were sufficient to presume that the Commissioner has followed due procedure contemplated under the Act relating to construction, maintenance and improvement of the public

streets. Mr. Godbole would rely on Section 114(e) of the Indian Evidence Act, 1872, which provides that “ the Court may presume existence of any fact, which it thinks likely to have happened, regard being had to common course of natural events, human conduct and public and private business in their relation to the facts of particular case.” Mr. Godbole, would, therefore, argue that the decision being taken in the public interest, by following the due procedure contemplated under Chapter XI of MMC Act, no interference is called for in the impugned order.

9 I have carefully considered submissions of the learned counsel for the parties. Be it noted that plaintiffs’ suit does not challenge the decision of the Municipal Commissioner, prescribing Regular Line of the street either on the ground that it was bad for want of authority of the Corporation or otherwise. Rather, plaintiffs, have simply challenged the notices on the ground that action of the Corporation was malafide and not in the public interest. Indisputably, impugned decision to

widen the Municipal road has been taken, pursuant to, State's directives issued vide Notification dated 6th November, 2019 under Section 37(1AA)(c) of the MRTP Act, 1966. Vide which, the State of Maharashtra in its 'Urban Development Department', directed the Municipal Corporation of Greater Bombay to convert all roads of width less than 9 meters to 9 meters and above, as per cited conditions through MRTP Act or MMC Act provisions. Having regard to nature of directives following the due procedure, Municipal Commissioner prescribed 9.15 Regular Line to the existing 6.10 meters wide road passing through the plots bearing survey numbers CTS 78, 79, 80, 88, 89 and 90 of Village Andheri under Section 297(1)(a) of the MMC Act, 1888. It is for the first time in this appeal proceedings, plaintiffs would argue that Commissioner's decision prescribing fresh line of the street in substitution of existing line had no sanction of the Corporation, as contemplated under Section 297(1)(b) of the MMC Act and due procedure had not been followed. However, pleadings in the plaint do not admit this challenge at all. In fact, challenge was founded on the,

premise, that that decision was not in public interest and/or it was malafide. Apart from, plaintiffs have not pleaded, that before taking decision to widen the public streets, the Corporation committed serious irregularities and that rendered, the decision illegal. Therefore, in absence of pleadings but in consideration of documents on record, it is to be presumed, that the respondent/Corporation has regularly performed its official acts. Normally, there is always a presumption that Governmental action is reasonable and in public interest and it is for the party challenging its validity, to show that it is wanting any reasonableness or is not in public interest. Burden is heavily on one and it has to be discharged to the satisfaction of the Court by proper and adequate material. Court can't lightly assume that the action taken by the Government is unreasonable or against public interest because there are large number of considerations, which necessarily weigh with the government in taking an action, as held by the Apex Court in the case of **Villianur Iyarkkai Padukappu v. Union of India (2009) 7 SCC 561**. Admittedly, in the case in hand, plaintiffs

have not placed material to show that the decision wasn't taken in the public interest nor there is a material to indicate or suggest that the decision to prescribe Regular Line of the street has been taken irregularly.

10 Herein, the Special Notice under clause (b)(i) of Sub-section 1 of Section 297 of the MMC Act was published on 10th August, 2019 by which sanction accorded by the Municipal Commissioner, to widen the suit road was put up in the street and people of the area were notified regular line of the suit road. However, appellants neither objected to it nor challenged the decision in appropriate proceedings. In fact, the suit in question was instituted after two years, i.e., in the year 2021 and that too, challenging consequential notices issued under Section 299 of the MMC Act without question decision under Section 297 of the MMC Act. Therefore, for want of challenge to decision, mere challenge to consequential notices, is of no consequence. On this ground alone, challenge must fail. Now, so far as Mr. Desai's contention that for want of authority of

the Corporation, the Commissioner couldn't have taken the decision of drawing the Regular Line of the street is concerned, it may be stated that even assuming but without admitting, that the Municipal Commissioner wasn't not authorized to prescribe the fresh line of the street in substitution of the line, nevertheless, the impugned order of the Corporation can't be tested in appeal proceedings, firstly because pleadings in the suit do not admit these ground and secondly, it is not open to attack the decision, after six months in view of Section 527(1)

(b) of the MMC Act which reads as under;

“527. Protection of persons acting under this Act against suits. - (1) No suit shall be instituted against the corporation or against [the Commissioner, the General Manager] [or the Director] or a Deputy Commissioner, or against any municipal officer or servant, in respect of any act done in pursuance or execution or intended execution of this Act or in respect of any alleged neglect or default in the execution of this Act-

(a) until the expiration of one month next after notice in writing has been, in the case of the corporation, left at the chief municipal office and, in the case of [the Commissioner, the General Manager] [or the Director] or of a Deputy Municipal Commissioner or of a municipal officer or servant delivered to him or left at his office or place of abode, stating with reasonable particularity the cause of action and the name and place of abode of the intending plaintiff and of his attorney or agent, if any, for the purpose of such suit; [nor]

(b) unless it is commenced within six months next after the accrual of the cause of action.”

. In the case in hand, the Municipal Commissioner approved proposal to widen the road by prescribing 9.15 meter wide Regular Line on 10th June 2019. After which Special Notice contemplated in terms of Section 297(1)(b)(i) was put up on the street, on 11th June, 2019. Admittedly, plaintiffs had neither challenged the decision of the Municipal Commissioner nor the said Special Notice, within the period of six months and, therefore, now it is not open to the plaintiffs to challenge the impugned action or decision of the Municipal Commissioner on the ground that for want of authority, impugned decision was illegal. Thus, to be stated that mere challenge to the notices issued under Section 299 of the MMC Act, being consequential to the decision of prescribing a fresh line of a public street, in my view, the learned Judge hasn't committed any error in exercise of the jurisdiction, by declining stay to the implementation of impugned notices. Even otherwise, the decision to prescribe the Regular Line of the street, was in

pursuance to the directives, issued by the State, which were indeed in the public interest. Therefore, in consideration of the facts of the case and for the foregoing reasons, no interference is called for in the impugned order. Appeal fails. It is dismissed.

11 All the applications therein are disposed of.

(SANDEEP K. SHINDE, J.)