

A M/S TRIG GUARDS FORCE LTD.
v.
MAHARASHTRA INDUS. DEV. CORPN. & ORS.

DECEMBER 6, 2007

B [DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Urban Development:

C *Maharashtra Slums Clearance & Improvement Act, 1971:*

*Commercial structures/shops in slum area—Demolition of—
Issuance of notice by the authority to demolish shops allegedly without
following mandatory requirements in terms of provisions under MRTP
Act—Order for demolition passed by the authority—Challenge to—
D Dismissed by High Court—On appeal, Held: The main grievance of
appellant-company was that they were not aware of the materials relied
on by the High Court—Under the circumstances it would be
appropriate to remand the matter to High Court for disposal afresh—
Direction issued—Monopolies and Restrictive Trade Practices Act—
E Ss. 52 and 53.*

**Appellants' case was that they constructed commercial
structures consisting of shops in a slum area; one of their shop, a
single storey structure was in existence long before the notified date
fixed for protecting existing structures under the Maharashtra Slums
F Clearance & Improvement Act, 1971; respondent No.3, authority,
wanted to evict the appellant-tenant from the said shop with ulterior
motive and *mala fide* intention in order to give respondent No.4, a
Hotel, direct access, on the Highway; respondent No.3 camouflaged
G a notice to demolish the structure on non-existing grounds without
fulfilling the mandatory requirement of at least 30 days notice as
required under Section 53(1) of the MRTP Act and without
conducting any enquiry as to whether there existed any ground under
Section 52(1) of MRTP Act to demolish the structure, directed the**

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appellant to demolish the structure/shop. The writ petition filed by the appellant challenging the action of the authority was dismissed by the High Court; Review Petition filed by the appellant was also dismissed by the High Court; In the meantime, an order was passed by the authority providing respondent No.4 access on the main Highway after demolishing the shop/shops. The appellant approached the High Court by filing another writ petition, which was dismissed by the Division Bench of the High Court. Hence, the present appeals.

Disposing of the appeals, the Court

HELD: 1.1. Inasmuch as the main grievance of the appellant was with regard to the orders passed by the High Court based on the plans produced by MIDC and the appellant was not aware of those materials which were relied on by the High Court, the matter is remanded to the High Court. Since the issue relates to demolition of structures and in the light of assertion of the appellant, ends of justice would be met by fresh disposal after affording opportunity to all the parties. [Para 7] [1049-A, B]

1.2. It is clarified that this Court has not expressed any opinion on the stand taken by the appellant as well as by the respondents including MIDC. [Para 7] [1049-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 984-986 of 2005.

From the final Judgment and Order dated 1.8.2002 and 22.1.2003 of the High Court of Judicature at Bombay in W.P. No. 3997/2002 and R.P. No. 98/2002 in W.P. No. 3997/2002 respectively.

Dr. Rajiv Dhawan, Sushil Kumar Jain, Puneet Jain, H.D. Thanvi, Piyush Jain and Prathibha Jain for the Appellant.

Shyam Divan, Shruti Choudhury, Jayasree Singh, V.N. Raghupathy, Gagan Sanghi and Rameshwar Prasad Goyal (for M/s. Fox Mandal & Co.) for the Respondents.

The Judgment of the Court was delivered by

A **P. SATHASIVAM, J.** (1) M/s Trig Guards Force Ltd., New
Bombay, aggrieved by the order dated 1.8.2002 passed in Writ Petition
No. 3997 of 2002, Order dated 22.1.2003 passed in Review Petition
No. 98 of 2002 in W.P. No. 3997 of 2002 and Order dated 17.2.2003
passed in Writ Petition No. 864 of 2003 by the High Court of Judicature
B at Bombay, has filed the above appeals by way of special leave petitions.

(2) Brief facts are as follows:

According to the appellant, they constructed commercial structures
consisting of nearly 50-60 shops in a slum area known as Turbhe Slum,
C Turbhe Village facing Thane-Belapur Highway Road. One of their shops
bearing No. 6104 was a single storey building/structure built in and was
in existence long before 1.1.1995 i.e., the notified date fixed for protected
structures under the Maharashtra Slums Clearance & Improvement Act,
D 1971 (hereinafter referred to as "the Slum Act") and as per the
Government Resolution and Notification issued from time to time. The
said building was assessed for Municipal Tax prior to 1.1.1995 and in
this regard the assessment was carried out by the Assessment Department
of Navi Mumbai Municipal Corporation. The said Bill shows that the
assessment was levied from 1994-95 and there was electric connection
E in the said building since long. The area was constructed under Section
47 of the Slum Act. The provisions of Municipal Laws and other laws
were not applicable in respect of the said shops/structures and have to
be governed as per the provisions of the Slum Act. The Deputy Engineer,
M.I.D.C. Division-II (Respondent No.3 herein) wanted to evict the
F appellant from the said shop with ulterior motive and *mala fide* intention.
Behind the aforesaid shop/shops (on Turbhe Village Thane-Belapur
Highway Road), there is a Hotel Centre Point. The said Hotel had no
direct access on the Highway. Respondent No.3 with a *mala fide* intention
to give direct access to respondent No.4 from eastern side of the Hotel
G i.e., directly on the Highway camouflaged a notice to demolish the structure
on non-existing grounds. The said notice did not fulfil the mandatory
requirement of at least 30 days notice as required under Section 53(1)
of the MRTP Act. By the said notice, respondent No.3 without any
enquiry as to whether there was existence of ground under Section 52(1)
of MRTP Act, directed the appellant to demolish the structure/shop.
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When the appellant challenged the action of the official respondent on the basis of the lay out plan (which was not shown to them), their writ petition was dismissed by the High Court. Review Petition filed by the appellant was also dismissed on the same grounds. Meanwhile, on the application of the 4th respondent-Hotel Centre Point, an order was passed by the official respondent providing way to the main Highway after demolishing the shop/shops. Again the appellant approached the High Court by way of a writ petition namely, W.P. No. 864 of 2003. By order dated 17.2.2003, the Division Bench of the High Court placing reliance on its earlier order dated 1.8.2002 passed in W.P. No. 3997 of 2002, order dated 22.1.2003 passed in Review Petition No. 98 of 2002 and finding no merit, dismissed the said writ petition, hence, the present appeals before this Court.

(3) Heard Dr. Rajiv Dhawan, learned senior counsel appearing for the appellant and Mr. Shyam Divan, learned senior counsel appearing for MIDC.

(4) Dr. Rajiv Dhawan, learned senior counsel, for the appellant made the following contentions:

(i) The MIDC had no basis to demolish the premises of the appellant.

(ii) Due process requirements under the statutes were not followed by the official respondents.

(iii) There was no application of mind by the MIDC in so far as:

(a) the appellant was the lawful owner of the premises;

(b) the premises were in a sanctioned layout scheme;

(c) the area was a protected slum area;

(iv) There was no effective hearing granted to the appellant prior to the demolition which violates the principles of natural justice.

(v) The appellant was denied information which formed the basis of the impugned judgment of the High Court.

(vi) The High Court exceeded its jurisdiction in granting legal

A sanction to the authorities to demolish the premises without an effective hearing, without due notice and without supplying any information to the appellant.

(vii) The action of the authority favouring 4th respondent-Hotel Centre Point is *mala fide* one.

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C (5) Mr. Shyam Divan, learned senior counsel, appearing for MIDC refuted all the above contentions. According to him, if it is a Slum Area, there must be a specific notification, in the absence of such notification, the claim of the appellant that their premises lie in Slum Area cannot be accepted. He denied the allegation that action was taken at the behest of 4th respondent-Hotel Centre Point. He finally contended that the statutory scheme provides appeal and revision, without exhausting the same, writ petitions before the High Court are not maintainable.

D (6) We considered the relevant materials and rival contentions of the learned senior counsel appearing on either side. We also perused the orders of the High Court dated 1.8.2002 in Writ Petition No. 3997 of 2002, dated 22.1.2003 in Review Petition No. 98 of 2002 as well as order dated 17.2.2003 in Writ Petition No. 864 of 2003. In the first order, the Division Bench of the High Court, after holding that since the appellant had encroached upon the road and constructed a ground, two storeyed structure which is wholly unauthorized, confirmed the notice issued for demolition and dismissed the first writ petition. While considering the review petition, the Division Bench after perusing the plans provided by E
F MIDC and finding that the appellants have raised unauthorized construction on the area demarcated for road dismissed the same. When the appellants filed another writ petition, namely, Writ Petition No. 864 of 2003, the Division Bench, after noting that earlier orders were passed based on the plans produced by the MIDC and of the fact that the appellant had raised unauthorized construction on the area demarcated for road, dismissed the G
said writ petition. Though Dr. Rajiv Dhawan, learned senior counsel, appearing for the appellants took us through various provisions of the MRTTP Act and contended that the official respondents were not justified in demolishing their structure, we are not inclined to go into those aspects in the light of the order to be passed hereunder.

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(7) Inasmuch as the main grievance of the appellant was with regard A
to the orders passed by the High Court based on the plans produced by
MIDC and the appellant was not aware of those materials which were
relied on by the High Court, we inclined to remand the matter to the High
Court. Since the issue relates to demolition of structures and in the light B
of assertion of the appellant, we are of the view that ends of justice would
be met by fresh disposal after affording opportunity to all the parties. It
is made clear that we are not expressing anything on the stand taken by the
appellant as well as by the respondents including MIDC. In view of the
same, we set aside the order dated 17.2.2003 passed by the High Court
in W.P. No. 864 of 2003 and restore the said writ petition on its file. The C
High Court is requested to dispose of the same afresh after affording
opportunity to all the parties. They are at liberty to place their respective
claim by way of an affidavit/counter affidavit supported by documents
within a period of four weeks from the date of receipt of the copy of this
judgment and thereafter it is for the Division Bench of the High Court to D
decide the writ petition on merits as early as possible.

(8) The Civil Appeals are disposed of on the above terms. No costs.

S.K.S.

Appeals disposed of.