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JAYANT ACHYUT SATHE
v.
JOSEPH BAIN D'SOUZA AND ORS.

JULY 14, 2006

B

[ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

C

Practice and procedure—Writ petition challenging legality of provisions—High Court appointed Committees to look into several aspects—Challenged to—Held: High Court did not decide the basic issue as to legality of provisions—It is also not clear whether writ petition was disposed or not and as to how Committee views were to be implemented—Thus, High Court directed to examine the issue—Development Control Regulations, 1991—Regulation 33(7).

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Respondents filed public interest litigation challenging the legality of Regulation 33(7) of the Development Control Regulations, 1991 as amended in 1999. High Court appointed some Committees to look into several aspects. Hence, the present appeal.

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Adjourning the matter with the direction to High Court, the Court

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HELD: It is not clear as to whether the writ petition has been disposed of by the High Court or not. There is no specific indication in that regard. It is also not clear whether after the Committees appointed expressed its views, what was the follow up action to be taken and by whom. High Court has not dealt with the basic issues raised in the writ petition as to whether the Regulation 33(7) of the Development Control Regulations, 1991 as amended in 1999 suffered from any infirmity. Therefore, the High Court is directed to examine the challenge to Regulation 33(7) and also maintainability of the Writ Petitions. [568-D-F]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2970 of 2006.

From the Judgment and Order dated 17.10.2005 of the High Court of Judicature at Bombay in W.P. No. 3189/2004.

WITH

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C.A. Nos. 2971, 2972, 2973, 2974, 2975, 2976, 2977, 2978 and 2979/2006.

R.F. Nariman, Dushyant Dave, C.A. Sundaram, S. Bhatnagar, Indra Sawhney, H. Devarajan, Prashant Narain, P.N. Gupta, Aman Vachher, Yadunath Choudhary, Ashutosh Dubey, Poonam Nagpal, J. Rais, P.N. Puri, Subrat Birla, S.C. Birla, Pramod Saxena, Jognin F. Reis, Anuradha Rustagi, S.V. Deshpande and Gaurav Agrawal for the Appellant. A

G.E. Vahanvati, Sol. General Ashok H. Desai, S. Diwan, K.K. Singhvi, M.L. Verma, Dr. A.M. Singhvi, U.U. Lalit, Pallav Shishodia, Ravindra Keshavrao Adsure, Gautam Patel, Indu Malhorta, Saveetha Sinha, Vikram Mehta, Shilpa Gupta, Vikas Mehta, S.H. Ujjainwala, Rahaul Gupta, Nupur Kanungo, Bhargava V. Desai, Chirag M. Shroff, Mukesh Kumar, M.N. Shroff, Karuna Nundy and Goodwill Indeevar for the Respondents. B

The Judgment of the Court was delivered by C

ARIJIT PASAYAT, J. Leave granted in each case.

Challenge in each of these appeals is to the legality of the judgment rendered by a Division Bench of the Bombay High Court at Bombay in a Public Interest Litigation filed by three citizens essentially questioning legality of Regulation 33(7) of the Development Control Regulations, 1991 (in short the 'Regulations'). These Regulations came into force with effect from 20th March, 1991. According to writ petitioners it is in essence delegated legislation under the Maharashtra Regional and Town Planning Act, 1966 (in short the 'Act'). The writ petitioners questioned the amendment brought in 1999 which provided for a minimum Floor Space Index (in short 'FSI') of 2.5 plus Additional FSI required for rehabilitation of existing tenants plus incentive FSI on several grounds. D E

The present appellant resisted the claim.

The High Court instead of deciding the core issue has by the impugned judgment appointed some Committees to look into several aspects which according to it had relevance for the basic and recurring problems. F

In support of the appeals, learned counsel for the appellants submitted that the High Court instead of deciding the basic issue has gone into unconnected matters, has lost sight of the fact that the views of the Committees appointed really will be of no consequence and would not throw any light on the legality or otherwise of the provisions which were challenged. The views of the Committees cannot be a substitute for a decision of the Court and in fact the High Court has not made it clear as to what will be the effect of the views of the Committees appointed and how they are to be implemented G H

- A and, in short, whether the Committees can deal with the legality or otherwise of the impugned provisions. Various details have been submitted to justify the legality of the impugned provisions. It was highlighted that the High Court did not consider a specific plea that the amended Regulation became operative from 1999 and for the first time challenge was made by the three
- B. writ petitioners in 2004. By that time on the basis of the amended provisions, various steps of conclusive nature have been taken by various persons.

In response, learned counsel for the writ petitioners before the High Court has supported the impugned judgment of the High Court.

- C We do not think it necessary to examine the merits of the rival contentions. At the outset it may be stated that it is not clear as to whether the writ petition has been disposed of by the High Court or not. There is no specific indication in that regard. It is also not clear whether after the Committees appointed express their views, what was the follow up action to be taken and by whom. As rightly pointed out by learned counsel for the appellants the
- D High Court has not dealt with the basic issues raised in the writ petition i.e. as to whether the amended Regulation 33(7) suffered from any infirmity. We, therefore, think it appropriate to direct the High Court to examine those issues. The parties shall be permitted to place their respective stands before the High Court. It is open to the appellants to canvass before the High Court as to the non-maintainability of the Writ Petitions. The High Court shall
- E appropriately deal with the same. It needs no reiteration that the High Court shall examine the challenge to Regulation 33(7) as amended in 1999. The interim order passed by this Court on 21.4.2006 shall continue to be in operation till disposal of the matter by the High Court. By order dated 21.4.2006 we had directed that no third party right shall be granted without
- F leave of this Court. During the pendency of the matter before the High Court it shall be for the High Court to deal with that aspect. It is made clear that the High Court shall deal with only the issue relating to validity of the provisions and maintainability of the Writ Petitions. Certain parties have filed Intervention Applications before this Court. These Applications shall be dealt with by the High Court. The High Court is requested to dispose of the matter
- G within three months from the date of receipt of the order. It is open to the parties to bring to the notice of the High Court our order.

Place these Appeals for further hearing in the first week of December, 2006.