

THE NEW INDIA CO-OPERATIVE HOUSING SOCIETY  
LTD.

v.

MUNICIPAL CORPORATION OF GREATER MUMBAI &  
ANR.

(Civil Appeal No. 5426 of 2008)

SEPTEMBER 2, 2008

[ALTAMAS KABIR AND MARKANDEY KATJU, JJ.]

*Bombay Municipal Corporation Act; S.354A:*

*Housing Society Plots – Lessee making construction in violation of conditions of lease deed – Expulsion of – Issuance of stop work notice and later its withdrawal by Municipal Corporation and sanction of amended plan – Correctness of – Held: Construction made in violation of terms of lease deed was illegal – No objection certificate from the society was condition necessary before obtaining sanction of the amended building plan from Municipal Corporation – In absence of NOC, Municipal Corporation cannot sanction the amended building plan – Order of Municipal Corporation withdrawing the stop work notice quashed.*

**Appellant, a registered Co-operative Housing Society, admitted respondent No. 2 and another as joint members. Under the terms of the Lease Deed, which have also been approved by the Municipal Corporation, the lessee could not have made any construction before getting the NOC from the Society. But the lessee, without getting NOC from the appellant-Society, wrongly proceeded with the construction as per amended plan. The appellant convened a Special General Meeting of the Society and expelled respondent No. 2 and another from the membership of the Society and terminated the lease. The appellant also initiated eviction proceeding against the respondents, which is pending. The appellant made**

A a representation to respondent No. 1 stating that  
respondent No.2 started construction as per amended  
plan in violation of clause 3(6) of the Lease Deed.  
Respondent No. 1 issued a '*stop work notice*' under Section  
354A of the Bombay Municipal Corporation Act. However,  
B respondent No. 2 continued to carry out construction  
work. Later, respondent No. 1 withdrew the '*stop work  
notice*'. Against this withdrawal order, a writ petition was  
filed by the appellant-Society in the High Court, which  
was dismissed by the Single Judge of the High Court  
and the judgment was upheld by the Division Bench of  
C the High Court. Hence the present appeal.

Respondents submitted that all the statutory  
requirements under the Bombay Municipal Corporation  
Act have been complied with by respondent No. 2, and  
D hence it cannot be said that there was any illegality  
committed in making construction as per amended plan;  
and that since the original building plan has been  
approved by the appellant, no fresh approval or NOC is  
required for the amended building plan.

E Allowing the appeal, the Court

HELD: 1.1 Respondent No. 2 has violated clause 3(6)  
of the Lease Deed and hence construction as per the  
amended plan was wholly illegal. (Para – 16) [1139,B-C]

F 1.2 When there is a specific stipulation in the Lease  
Deed that NOC from the lessor has to be obtained for the  
purpose of obtaining sanction of the building plan from  
the Municipal Corporation, that NOC from the lessor would  
also be necessary for obtaining sanction for an amended  
G building plan. To take a contrary view would make the  
stipulation, as in clause 3(6) in the Lease Deed, redundant.  
(Para – 18) [1139,D-F]

H 1.3 The matter was not between the lessee and the  
municipal corporation alone, there was a third party

interest which intervened, i.e of the lessor. Moreover, respondent No. 1, the Municipal Corporation cannot sanction the modified plan unless a fresh NOC had been obtained by the lessee from the appellant-Society. (Para – 20) [1140,C-D]

2. In the facts and circumstances of the case, the judgment of the Single Judge as well as Division Bench of the High Court, are set aside. The writ petition filed before the High Court is allowed and the order of the municipal authorities withdrawing the 'stop work notice' is quashed. (Para – 22) [1140,G-H]

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 5426 of 2008

From the final Judgment and Order dated 1.9.2006 of the High Court of Judicature at Bombay in Appeal No. 581 of 2006

V.A. Mohata, P.R. Ramasesh and P.B. Amin for the Appellant.

Sunil Gupta, Shekhar Naphade, Jatin Zaveri, Atul Y. Chitale, Suchitra Atul Chitale and Sunaina Dutta for the Respondents.

The Judgment of the Court was delivered by

**MARKANDEY KATJU, J.** 1. Leave granted.

2. This appeal has been filed against the impugned judgment of the Division Bench of the Bombay High Court dated 01.9.2006 in Appeal No. 581 of 2006 which was filed against the judgment of a learned Single Judge dated 10.7.2006 in Writ Petition No. 1753 of 2006.

3. Heard learned counsel for the parties and perused the record.

4. Before we deal with the facts of the case we may mention with due respect that the judgment of the learned Division Bench of the High Court is very cryptic. The entire judgment is as follows:

A " We heard Mr. Shekhar Shetye, the counsel for appellant Society.

The consideration of the matter by the learned Single Judge regarding withdrawal of the Notice under Section 354A of the Bombay Municipal Corporation Act cannot be said to suffer from any legal infirmity.

B We are informed that dispute between petitioner and respondent No. 2 is already going on in appropriate forum. Obviously, the rights of the parties shall be decided in that dispute.

C Appeal is dismissed in limine"

5. A perusal of the said judgment shows that even the facts of the case are not mentioned therein. In our opinion, when a judgment is written, the learned Judge/Judges should at least briefly mention the facts of the case and what was the controversy about and then give its reasoning, but that has not been done by the learned Division Bench.

6. Learned counsel for respondent No. 2, Mr. Sunil Gupta, submitted that since it is a judgment of affirmance, the facts and reasoning need not be given. With respect we cannot agree, otherwise every Letters Patent Appeal can be dismissed by one sentence by saying that the Division Bench agrees with the judgment of the learned Single Judge. The appellant court, even in a judgment of affirmance, must show that it has properly applied its mind to the case, and not acted as a rubber stamp. It must at least briefly give the facts of the case, and its own independent reasoning.

7. However, we have perused the judgment of the learned Single Judge dated 10.7.2006 against which the aforesaid Letters Patent Appeal was filed in the High Court, and we have also considered the facts of the case. Hence, instead of remanding the case we are deciding it on merits.

H 8. The appellant is a Co-operative Housing Society

registered under the Bombay Act VII of 1925. Respondent No. 2 and one Tarla Patel were admitted as joint members of the appellant-Society dated 25.11.2000, and a building plan dated 14.11.2000 was submitted by respondent No. 2 to the appellant-Society for approval, and approval was granted by the appellant. A true copy of the building plan approved by the appellant-Society is at Annexure P-1 to this Appeal.

9. On 31.5.1973, a lease was granted by the appellant-Society (the lessor) with respect to the plot in question in favour of J.C. Patel, and it has been provided therein that any structural alterations and additions by the lessee in the building or buildings on the demised premises required previous consent in writing of the appellant. The conditions of the Lease Deed dated 31.5.1973 between the appellant-Society and the lessee state that one of the terms of the Lease Deed as mentioned in clause 3(6) thereof is as follows:

*"That the plans and elevations of any new building which may hereafter with the permission of the lessor be proposed to be erected upon the demised premises shall be first submitted and approved of in writing by the lessor and that no buildings of erections now or at any time standing upon the demised premises shall be pushed down or removed nor new buildings commenced nor to make or permit to be made any structural alterations and additions in the building or buildings on the demised premises except with the previous consent in writing of the lessor"*

*(emphasis supplied)*

10. In the conditions to be complied with before starting the work of building on the plot in question, respondent No. 1 has mentioned (as condition No. 13):

*"That the N.O.C. from the Society along with extract of General Body Resolution for development will be submitted before C.C."*

A 11. Thus, under the terms of the Lease Deed, which has been also approved by respondent No.1, the lessee could not have made any construction before getting the NOC from the appellant-Society.

B 12. It appears that the lessee made substantial changes in the original building plan dated 14.11.2000 without getting NOC from the appellant-Society. In the original plan dated 14.11.2000 which had been approved by the appellant-Society and thereafter by respondent No. 1 the proposal was for building three floors without stilt with built up area of 1135.86 square meters, but in the amended plant dated 27.12.2004 what was proposed to build was four floors with built up area of 1203.69 square meters, plus what has been described as stilt area. It is alleged by the appellant that respondent No. 2 suppressed the subsequent plan dated 27.12.2004 and was guilty of willfully deceiving the appellant by giving false representation and false assurance which was not meant to be fulfilled. Respondent No. 2 wrongly proceeded with the construction in accordance with the amended plan dated 27.12.2004, as a result of which the appellant convened a Special General Meeting of the Society on 19.11.2005 expelling respondent No. 2 and Tarla Patel from the membership of the appellant-Society.

F 13. After terminating the lease dated 10.9.2005, the appellant-Society also initiated eviction proceeding against the respondents which is pending.

G 14. The appellant represented to respondent No. 1 that the amended plan was illegal as it was against clause 3(6) of the Lease Deed, and also against the conditions to be complied with before construction could be started. On receiving this representation of the appellant-Society, respondent No. 1 issued a 'stop work notice' dated 30.12.2005 under Section 354A of the Bombay Municipal Corporation Act.

H 15. It is alleged in the representation that despite the 'stop work notice' respondent No. 2 continued to carry out construction work illegally in violation of the terms of the Lease Deed and

the original plan. However, subsequently, by the impugned letter dated 22.6.2006, respondent No. 1 withdrew the 'stop work notice' dated 30.12.2005. Against this withdrawal order dated 22.6.2006, a writ petition was filed in the High Court by the appellant-Society which was dismissed by the learned Single Judge and the judgment was upheld by the Division Bench on appeal. Aggrieved, this appeal has been filed before this Court.

16. In our opinion, it is very clear that respondent No. 2 has violated clause 3(6) of the Lease Deed dated 31.5.1973 and hence in our opinion construction as per the amended plan dated 27.12.2004 was wholly illegal.

17. However, learned counsel for both respondent Nos. 1 & 2 submitted that all the statutory requirements under the Bombay Municipal Corporation Act have been complied with by respondent Nos. 1 & 2, and hence it cannot be said that there was any illegality. With respect we cannot agree.

18. In our opinion, when there is a specific stipulation in the Lease Deed dated 31.5.1973 that NOC from the lessor has to be obtained for the purpose of obtaining sanction of the building plan from the Municipal Corporation such NOC from the lessor would also be necessary for an amended building plan before the Municipal Corporation can sanction the building plan. To take a contrary view would make the said stipulation in the Lease Deed, which in this case is in clause 3(6) of the Lease Deed, redundant.

19. Mr. Sunil Gupta, learned senior counsel for respondent No. 2 submitted that since the building plan dated 14.11.2000 has been approved by the appellant, no fresh approval or NOC is required from the appellant-Society for the amended building plan. We cannot agree. If we accept this submission that would mean that even if the NOC has been granted by the lessor for a one-storey building, for constructing a 20-storey building fresh NOC or approval from the lessor need not be taken. Such a view can plainly not be accepted. In our opinion in view of the stipulation in clause 3(6) of the Lease Deed, a fresh approval

A or NOC would be required from the lessor if the lessee wants to amend the original building plan.

20. In the present case, it may be noticed that the original plan of the lessee for which NOC had been obtained from the appellant had been sought to be materially changed by the lessee without taking a fresh NOC from the lessor, i.e. the appellant-Society. In our opinion, a fresh NOC had to be taken from the appellant-Society by respondent No. 2 (lessee) if she wanted to change the original building plan. The matter was not between the lessee and the municipal corporation alone, there was a third party interest which intervened, i.e. of the lessor. We, therefore, agree with Mr. V.A. Mohta, learned senior counsel for the appellant that respondent No. 1, the Municipal Corporation cannot sanction the modified plan unless a fresh NOC had been obtained by the lessee from the appellant-Society.

21. As regards the observation in paragraph 3 of the impugned judgment of the Division Bench dated 1.9.2006, we are of the opinion that the dispute between the appellant and respondent No. 2 which is going on before the co-operative authorities has nothing to do with the powers of the Bombay Municipal Corporation which is a statutory body. We are concerned in this case about how a statutory body, like the Bombay Municipal Corporation should exercise its power. This has nothing to do with the dispute between the two private parties viz., respondent No. 2 and the appellant. Hence, the observation in paragraph 3 was wholly irrelevant and misconceived.

22. In view of the above, this appeal succeeds and the judgment of the learned Single Judge as well as the Division Bench, are set aside. The writ petition filed before the High Court is allowed and the order dated 22.6.2006 of the municipal authorities withdrawing the '*stop work notice*' is quashed. The appeal stands allowed. No costs.

H S.K.S.

Appeal allowed.