

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Appeal from Order No. 217 / 2021

Alongwith

Interim Application No. 3217 / 2020
in
Appeal from Order No. 217 / 2021

Alongwith

Appeal from Order No. 216 / 2021

Alongwith

Interim Application No. 3216 / 2020
in
Appeal from Order No. 216 / 2021

Shree Mulund Stall Holders and Owners
Welfare Association (Registered) .. **Appellant**

Versus.

Municipal Corporation of Greater Mumbai
Thr. Its Ward Office "T" Ward. .. **Respondent**

Mr. G.V. Murti a/w Y.K. Tiwari i/by Pradeep L Dubey,
Advocate for the Appellant.

Mr. Dharmesh Vyas a/w Mr. Ravindra Sirsikar,
Advocate for Respondent/MCGM.

CORAM : SANDEEP K. SHINDE J.
RESERVED ON : 2nd MARCH, 2022.
PRONOUNCED ON : 9th MARCH, 2022.

Oral Judgment : -

1. It is settled law that if a project undertaken by the local body is beneficial for larger public, inconvenience to small number of people is to be accepted. Thus, proposition of law is that individual interest or for that matter smaller public interest must yield to the larger public interest. Therefore, inconvenience to some, should be bypassed for a larger interest or cause of the society.

. Here is the case, where retail vendors, who were permitted to install small stalls along the road, abutting Railway Station, in Suburbs of Mumbai, have declined to shift their stalls, at alternate locations, offered by the local Authority. As also they are not willing to accept compensation offered

by the local body - in lieu of their stalls. Reason being, the alternate sites offered were not 'suitable'. Facts of the case, are like this. Appellant is a registered Association of stall-holders. Its' members claim that Standing Committee of the Corporation vide Resolution dated 17th August, 1983 authorized them, to install stalls of a specified size along S.V.P. Road, abutting Mulund Railway Station, between west side of Railway Station Gate up to Police Chowki. Indisputably stalls abutting the Railway Station had caused the situation like, water-logging in past in rainy season. Thus, to prevent water logging in Railway Station, Respondents decided to construct storm water drain, to cause the water run-out. As also since the suit stalls are constructed along a road, having large volume of vehicular traffic, Corporation decided to shift stall-holders, to alternate sites to widen the width of the road. It all, necessitated the Corporation to issue notices

on, 17th August, 2017, to the members of the Appellant-Association, under Section 485 and 485A of the Mumbai Municipal Corporation Act. These notices were challenged in suit no. 2438/2017. Whereupon, the learned Judge, City Civil Court, on 6th November, 2017 passed the following order.

"Notice under Section 485 and 485(A) of the MMC Act. Both these sections provides for how service of notice is to be effected and the power of Commissioner to call for information as to the Ownership of the premises. As such it appears that the plaintiff in the suit is challenging the said notice, when infact the concerned authority has not yet considered the documents and has not come to any conclusion. The concerned Officer present before the Court submitted that the further course of action would be considering the documents, preparing inventories, passing orders and draft annextures will be prepared and will be communicated to the concerned. May that it be, it appears that the plff has filed the suit at premature stage. Hence the N/ m as well as suit can be disposed of on certain

conditions. The plaintiff shall submit all the relevant documents within a week. The concerned authorities after considering the same and following the procedure will intimate the plaintiff in writing the said order. It is also submitted by the concerned Officer that plaintiff will be given hearing after publication of Annexure II. If the final order/ speaking order is adverse to the plaintiff then no coercive action will be taken for period of one week. This N/m is disposed of accordingly. N/m be registered for statistical purpose."

2. Thus, the learned Court, directed the members of Association to submit all relevant document to Municipal Authority for its' consideration. Pursuant to that, Corporation held some members of Appellant-Association eligible for raising stall at alternate places. Let me note, that the members of Association have their stalls on S.V.P. Road, Mulund (West). There is yet another association of stall owners,

namely 'J.S.D. Stall Owner Association', whose members were occupying the stalls along a J.S. Road, near Railway Station, Mulund (West). Members of the said association were also issued notices by the Corporation. Whereafter, J.S.D. Stall Owner Association, had filed the Writ Petition Lodging No. 671/2020, questioning legality of notices and alleging that Corporation was only targeting its' members but guarding the stalls of Appellant-Association, although both, were similarly situated. It is noteable that, Counsel appearing for the Corporation in the said Writ Petition, informed the Division Bench that Corporation shall demolish all stalls on N.S. Road and S.V.P. Road simultaneously. As to alternate stalls offered to the members of J.S.D. Stall Owners Association is concerned, Association had agreed to accept the stalls at alternate place. The Paragraph No. 3, 4 and 5 of the order dated 28th February, 2020 in WP. Lodging No. 671/2020 reads as under;

"3. As far as the issue pertaining to providing alternate stalls to the members of the Petitioner Association is concerned, the Petitioner Association on behalf of 30/31 stall holders has agreed to accept the stalls at Shankar Gopal Joshi Marg, Mulund, West, Mumbai. The 30/31 stall holders through the Association undertake to vacate their respective stalls by 03.00 p.m. on 29th February, 2020.

4. The Corporation shall start the demolition work on 29th February, 2020 at 03.00 pm.

5. The concerned Deputy Commissioner of Police shall provide necessary protection to the Demolition Squad of the Corporation."

3. Here members of the Appellant-Association have been held eligible for raising their stalls at alternate locations. Vide notices dated 29th February, 2020 purportedly issued under Section 314 of the MMC Act, Corporation offered alternate place at six different locations to the Appellants' members and were directed to opt their choice and shift stalls within 24 hours. Vide notice, they were requested to contact the Assistant Engineer, Maintenance, in case of any difficulty. Ideally, they ought have accepted the offer. However notices

were challenged in the L.C. Suit Stamp No. 2927/2020 in Bombay City Civil Court, Bombay. Contending, that, since they have been permitted to install stalls by the Standing Committee, they were not unauthorized occupants and therefore Corporation cannot evit or ask them to shift. Pending suit, Plaintiff-Association sought stay to execution and implementation of notice dated 29th February, 2020, which the trail Court declined vide order dated 5th March, 2020. That order is under challenged in these appeals, under Order-43, Rule-1(r) read with Section 104 of the Civil Procedure Code.

4. Proceeding before this Court/Orders :

(i) On 12th March, 2020, the following order was passed by this Court.

“Learned counsel for the Appellant-Association states that the stall owners shall report to the Assistant Commissioner “T” Ward at 5.00 p.m. in his office when an amicable resolution could be discussed.

2. The learned counsel for the Corporation states that the Assistant Commissioner would make every possible effort and endeavour to resolve the issue by offering alternate suitable pitch to the members of the Appellant.

3. List the Appeal on 17 March, 2020 under the caption 'for Settlement'.

4. The ad-interim relief already in operation to continue till then. It is made clear that this interim order is restricted to the stall owners who are parties to this Appeal from Order."

. The underlined part of the order, indicates at one time stall holders were inclined to accept the offer. Nevertheless to afford more time, the order dated 12th March, 2020 was continued from time to time. Be it noted that till 14th January, 2022, members of the Appellant-Association did not exercise the choice. Therefore, this Court on 14th January, 2022, directed the Appellants to exercise the option within three weeks.

(ii) On 10th February, 2022, Counsel for the Corporation informed the Court, that members of the Appellant-Association did not exercise the option. In that view of the matter, Corporation was called upon to place on record its' policy decision relating to rehabilitation of projected affected persons. Accordingly, Mr. Vyas, learned Counsel for the Corporation, has placed on record a policy circular of the Corporation, allowing monetary compensation to the commercial project affected persons.

5. Mr. Vyas, learned Counsel for the Corporation, submitted that since eligible members of Appellant-Association, were not willing to accept the alternate place offered by the Corporation, as per the policy, the members of the Association shall be paid monetary compensation. The statement is accepted as an undertaking to this Court. Next

submission of Corporation, is that even assuming, but without admitting, that resolution of Standing Committee, has created some rights in favour of stall-holders, but even then they cannot impede or hold-up the projects undertaken by the Corporation in the interest of citizens and particularly when, Corporation was/is willing to offer alternate sites or monetary Compensation. Mr. Vyas therefore submits order impugned calls for no interference.

6. Mr. Murti, learned Counsel appearing for the Appellants, contended that the Corporation could not have issued the notice under Section 314 of the MMC Act, reason being the members of Appellant-Association are occupying the suit stalls under the authority of Standing Committee. His next submission is that, the decision of Corporation to offer monetary compensation, in terms of its' policy, cannot be applied to the facts of this case. He submitted that there is no material/documents on

record to even suggest that Corporation has prescribed the road-line in terms of Section 297 of the MMC Act. Mr. Murti vehemently, submitted the members of the Appellant-Association being authorized occupants, they cannot be evicted, without following the procedure prescribed for the acquisition under the MMC Act. Mr. Murti further submitted that the learned trial Court failed to appreciate the character of possession of the stall holders and the relevant provision of the MMC Act. Submission is that the suit structures/stalls have been protected and since the appeal is preferred against the order, refusing the ad-interim relief, let the relief be continued and the trial Court be directed to decide the motion on its' own merits.

7. In consideration of rival submissions, it can be said, that assuming that raising of these stalls along the S.V.P. Road near Mulund Railway Station, was authorized by order/permission granted in

pursuant to resolution of Standing Committee, yet, fact cannot be overlooked that stalls had caused and cause the water logging in rainy season at Railway Station; as well obstructing movement of vehicular in traffic. Therefore the Corporation as its statutory obligation, has resolved to construct the storm water drain to prevent a water logging and widen the width of S.V.P. Road to ease vehicular traffic. Therefore, the projects undertaken by the Corporation are in the public interest and in discharge of its statutory duties. Thus, what Appellants are seeking is an order to injunct the Corporation from discharging their statutory obligations. Moreso, the stall holders have been offered the alternate sites for installing the stalls at six different locations. Also it is evident from the orders passed by this Court from time to time, that the eligible members of Appellant, have not exercised the option for over period of two years and therefore it is to be

inferred and held that they are not interested in alternate sites. Be that as it may, resolution of the Standing Committee dated 22nd June, 1983 and a letter addressed to Appellants on 27th June, 2002 by the Assistant Commissioner 'T' Ward, on the face of it simply grants license to install the existing stalls. Neither it is a grant, nor creates proprietary rights in favour of the allottees. The facts emerging from the resolution of the Standing Committee and consequential communication are thus;

"The Standing Committee vide their resolution no. 2722 dated 28th November, 1979 desired that the existing licensees along S.V.P. Road, Mulund (West) be first shifted to the plots earmarked for the markets. However, Councilors were of view that stalls at S.V.P. Road, near Mulund Railway Station may not be shifted to new markets at plot no.36 and 5-A. They desired that instead of shifting the stalls, the Administration may allow them to continue at S.V.P. Road, near Mulund Railway

Station, provided each stall holder reduces the size of the stall $\frac{1}{2}$ of the present size, from the front so as to widen the road." The efforts over a decade by the Administration to shift stalls to the new markets were not successful as a stall-owners and other interested parties have instituted protracted litigations. The stall-holders were not willing to shift to the new markets; but ready to reduce the size of the stall to $\frac{1}{2}$ of their present size, if they were allowed to remain on the existing site i.e. on S.V.P. Road. Whereafter it appears the stall-holders were permitted to reconstruct the existing stalls of a particular size upon certain terms and conditions."

. Therefore, neither the resolution of the Standing Committee, nor the letter dated 27th June, 2002 creates any interest in favour of the stall-holders. Therefore, a character of possession of the stall-holders is that of 'licensees' and nothing more. Thus, taking into consideration, the facts of

the case, it is evident that even in past, Corporations' efforts to shift stall-holders to the new markets at plot no. 36 and 5-A, were successfully stalled by the members of the Appellant-Society. Now it is need of the time to shift the stalls, inasmuch as the stalls were/are causing hindrance in constructing the storm water drain, which would cause water run out and prevent a water logging in the Railway Station. For the reasons aforestated, in my view the Appellants have neither made out a prima-facie case, nor the balance of convenience tilts in their favour, nor they would suffer irreparable loss if shifted to new site offered by the Corporation. If at all they do not wish to shift to the new sites, Corporation is ready and willing to compensate to them in accordance with law and policy in place. In that view of the matter, the order impugned requires no interference. Appeals are dismissed.

8. Appeals and all Applications therein, are disposed of.

(SANDEEP K. SHINDE, J.)

9. When order was pronounced at 10:30 am., nobody was present on behalf of the Appellant. At 01:30 pm., Counsel for the Appellant requested to continue the protection, that was granted by the trial Court vide order dated 5th March, 2020 for a period of two weeks.

10. In consideration of the facts of the case, ad-interim protection is extended for three weeks from today.

(SANDEEP K. SHINDE, J.)