

Maganlal Chaganlal (P) Ltd.

Vs

Municipal Corporation of Greater Bombay and Others

Civil Appeal No. 680 of 1968

(P. N. Bhagwati, A. C. Gupta, N. L. Untwalia JJ)

30.01.1975

JUDGMENT

GUPTA, J. -

1. This appeal, brought on certificate granted by the High Court at Bombay, is directed against an order dismissing the writ petition filed by the appellant company challenging an order made under Section 105-B of the Bombay Municipal Corporation Act, 1888 (hereinafter referred to as "the Act") by which the appellant was asked to vacate the premises in dispute within one month of the date of the Service of the order. The validity of the order under Section 105-B was questioned on several grounds including the ground that Chapter V-A of the Act, particularly Section 105-B thereof, was violative of Article 14 of the Constitution. This writ petition was heard along with two others filed by other parties in which also the constitutional validity of Chapter V-A of the Act was questioned. The High Court held that the provisions of Chapter V-A did not contravene Article 14 and dismissed the writ petition filed by the appellant on this and two additional grounds. The first of these grounds was that under Section 105-F of the Act an appeal lay against an order under Section 105-B and therefore the appellant should have exercised his "normal right of appeal" instead of moving the High Court under its special writ jurisdiction. The second ground was that the appellant was guilty of suppression of a material fact which disentitled the appellant from invoking the writ jurisdiction of the High Court.

2. In this Court the question whether Chapter V-A of the Act was violative of Article 14 was heard by a Constitution Bench which held inter alia that the provisions of Chapter V-A are not hit by Article 14 of the Constitution [see *Maganlal Chaganlal (P) Ltd. v. Municipal Corporation of Greater Bombay* ((1974) 2 SCC 402)] and this appeal and the several other appeals that were heard along with it on the said question were directed to be posted for disposal before a Division Bench. This is how the appeal has come before this Bench.

3. Mr. Mazumdar, learned Counsel for the appellant, stated frankly that the constitutional point having been decided against the appellant there was no other ground which he could possibly urge in this appeal. He however submitted that the remark made in the judgment of the High Court that the petition was guilty of suppression of a material fact was not correct and that the cost of Rs. 4,000 awarded against the petitioner was too harsh. According to Mr. Mazumdar the notion that the petition was not bona fide led to such heavy cost being awarded against petitioner.

4. To find out whether or not any material fact was intentionally kept back from the Court it would be necessary to refer to the background of the case. According to the appellant it was only on May 12, 1966 that they came to know of the order under Section 105-B made on March 19, 1966.

Finding that it was impossible to get alternative accommodation within the time given to them by the said order to vacate, the appellant's representative asked for six months' time from the Municipal Commissioner and, as required by that authority, left a letter with him praying for six months' time and stating that they would vacate and hand over peaceful possession before the expiry of that period. The statement of case filed in this Court on behalf of the appellant records that they did not keep a copy of that letter with them. On September 15, 1966 the Municipal Corporation of Greater Bombay informed the appellant that execution of the order dated March 19, 1966 had been stayed for two months i.e. up to October 17, 1966. In the meantime, on October 13, 1966 the appellant had filed a writ petition challenging the validity of the order dated March 19, 1966 which the appellant subsequently withdrew with liberty to file a fresh petition. Thereafter on October 21, 1966 the appellant filed the petition out of which this appeal arises. As stated already, the petition was dismissed by the High Court on two grounds apart from the ground that Chapter V-A of the Act was not violative of Article 14 of the Constitution. Mr. Mazumdar pointed out that the appellant had stated in their writ petition that the Commissioner had given them two month's time to vacate, though it was not added that this time was allowed upon their letter addressed to the Commissioner praying for six months' time. In their statement of case the appellant stated that they had kept no copy of the letter to the Municipal Commissioner praying for time. Mr. Mazumdar submitted that the absence of any reference to that letter in the writ petition was due to the fact that the appellant did not have with them a copy of that letter. We find no reason to think that this is an incorrect statement. We do not think that the appellant suppressed deliberately any material fact from the Court. We are however not prepared to reduce the amount of costs awarded against the appellant. It is made clear in the judgment of the High Court that the award of costs was not by way of penalty but that in the circumstances of the case the Court thought that "the award for costs should be on the highest permissible scale", and the amount of costs was quantified at the request of the Counsel for the petitioner.

5. Subject to the observation that we cannot say that the appellant was guilty of suppression of any material fact in their writ petition, this appeal is dismissed. In the circumstances of the case we make no order for costs in this Court.

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