

**SUPREME COURT OF INDIA**

Indian Mercantile I.B. Assn. (Tenants)

Vs.

Union of India

C.A.No.3334 of 2008

(Dr. Arijit Pasayat and Lokeshwar Singh Panta JJ.)

06.05.2008

**JUDGMENT**

**Dr.Arijit Pasayat, J.**

1. Leave granted.

2. Challenge in this appeal is to the order dated 25th August, 2006 passed by a Division Bench of the Bombay High Court dismissing the writ petition filed by the appellants on the ground that they have an alternative statutory remedy by way of Appeal. Reference was made to Section 103-A of the *Maharashtra Housing and Area Development Act, 1976 (in short the `MHAD Act')* and a decision of this Court in *Crawford Bayley v. Union of India*<sup>1</sup>.

3. While issuing notice on 10.11.2006 it was inter alia ordered as follows:

“Permission to file additional documents is granted. The additional documents are taken on record.

Issue notice.

Counsel for the respondent no.2, present on caveat, accepts notice. Notice shall go to the unrepresented respondents to show cause why this matter be not remitted to the High Court for fresh consideration in view of the fact that the relief sought for in prayer(d) of the writ petition may not be available under the Public Premises Act.

In the meantime, there shall be status quo as regards possession.”

4. Learned counsel for the appellant submitted that the High alternative statutory remedy overlooking the parameters of Sections 92 and 103-A of the MHAD Act. It is pointed out that the relief in terms of Section 103A cannot be granted in appeal. It is stated that the Mumbai Building Repairs and Reconstruction Board (in short the `Board') has accepted that appellant filed an application in terms of Section 103-A of MHAD Act, though earlier it had

taken the stand before the High Court that no such application was filed. Before the High Court the Board had stated in the counter affidavit that the appellants have not made any application in terms of Section 103 of the MHAD Act to enable the respondents 5 & 6 to initiate acquisition proceedings. The position was reiterated in the counter affidavit filed in this Court stating that the appellants had not made any application under Chapter VIII A of the MHAD Act to enable the respondent Nos.5 & 6 to initiate acquisition proceedings. But after the rejoinder was filed, it has been accepted that in fact such an application has been filed on 28.8.1986 and the later in May, 1987 the appellants filed application before the Executive Engineer, Cooperative Housing Societies, Repair and Reconstruction Cell of Board. This clearly indicates the position, which has been indirectly accepted, that in the application made in May, 1987, it was pointed out that there was no condition regarding requirement of premises being at least 50% of residential nature. It is accepted that said averment is substantially correct. It is stated that the application is not traceable. Board has, however, not denied the assertion of the appellant about the same.

5. Mr. Gopal Subramaniam, learned Additional Solicitor General pointed out that even though application has been filed in terms of Section 103A of the MHAD Act, the appellants are not entitled to any relief. Reliance is placed on the proviso to said section.

6. Learned counsel for the appellant pointed out that proviso in question was inserted in 1989. But the application was made much earlier in May, 1987. It is fairly accepted by learned counsel for the respondents that the nature of the relief in terms of prayer (B) in the writ petition cannot be granted under the Act. Above being the position, we set aside the impugned order of the High Court and remit the matter to it for fresh disposal in accordance with law. The interim order dated 10.11.2006 shall operate for a period of eight weeks. In the mean time it shall be open to the parties to move the High Court for such interim protection as is available in law. We make it clear that we have not expressed any opinion on the merits of the case.

7. Appeal is allowed to the aforesaid extent without any order as to costs.

<sup>1</sup>(2006 (6) SCC 25)