

SUPREME COURT OF INDIA

New India Co-operative Housing Society Ltd.

Vs.

Municipal Corporation of Greater Mumbai

S.L.P.(Civil) No. 20670 of 2006

(Altamas Kabir and Markandey Katju JJ.)

02.09.2008

JUDGMENT

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:

" 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.

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.

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 appellants 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.

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."

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.

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.

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

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.

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 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.