

SUPREME COURT OF INDIA

Veena Corp. Thr.Rajan Babulal Mehta

Vs.

Ashok Arjanbhai Jolia

S.L.P. (C) No.15843 of 2008

(Altamas Kabir and Markandey Katju JJ)

19.03.2009

JUDGEMENT

Altamas Kabir,J.

1. This special leave petition arises out of steps taken by the Municipal Corporation of Greater Mumbai to remove 11 structures on Kulupwadi Road, Borivali (East), which were allegedly causing a traffic bottleneck. Out of the 11 structures 9 were demolished on 12th February, 2001. One of the structures, however, occupied by Ganesh Flour Mill 2 could not be removed on account of BCCC Suit No.907 of 2001 filed by the said flour mill. Since the structures in question were situated in a slum area, wherein there was a Slum Rehabilitation Authority (S.R.A.) Scheme in respect of CTS Plot Nos.545 and 546 and the construction of an SRA building was also going on, the Assistant Municipal Commissioner concerned wrote to the Executive Officers of MHADA, with a copy to the Deputy Collector (SRA), to confirm the status of the owners of the two structures and to provide them suitable alternate accommodation in the said SRA Scheme by instructing the Developer accordingly.

The Developer, M/s. Veena Corporation, is the petitioner in this Special Leave Petition.

2. On 2nd July, 2001, the S.R.A. confirmed the status of the respondent Nos.1 and 2 herein, who were allegedly running the above-mentioned flour mill, as being eligible for a residential-cum- commercial allotment. As respondent Nos.1 and 2 were dissatisfied with the decision of the S.R.A., they filed Writ Petition No.2213 of 2002 before the Bombay High Court claiming that in lieu of the areas which were under their occupation, they were entitled to two commercial units, one for the flour mill and the other for a godown. The said writ petition was rejected on the finding that the said respondent Nos.1 and 2 were entitled to one unit equal to the total area under their occupation as a commercial-cum-residential unit. Their claim for two commercial units was, therefore, disallowed.

3. In Appeal No.225 of 2003 filed against the order of the learned Single Judge, the Division Bench granted leave to the respondent Nos.1 and 2 herein to make an appropriate application to the S.R.A., who were directed to consider afresh as to whether the respondent Nos.1 and 2

were entitled to use the residential-cum-commercial premises to run the flour mill. The S.R.A. reconsidered the matter and reiterated the earlier position holding that the applicants were eligible for one commercial structure only since the same were not used for residential purposes so as to make the occupants eligible as slum dwellers to have a residential unit. Thereafter, Writ Petition No.990 of 2004 filed by the respondent Nos.1 and 2 challenging the decision of the S.R.A. dated 12th December, 2003 came to be disposed of on 27th July, 2006, by the following order :-

“The learned counsel appearing for Petitioners states that they give up their challenge to the order impugned in the Petition because by that order, it is clearly recorded that the premises where the Petitioners were running a flour mill has been found to be of 275 sq. ft. area and the Petitioners have also been found running flour mill in those premises.

The statement is accepted. The learned counsel appearing for Respondents states that according to the relevant regulation, the petitioners would be entitled to 225 sq. ft. of structure for running their flour mill free of cost and additional area of 50 sq. ft. on payment as per the regulation, if they make an application to the Chief Executive Engineer, S.R.A. for that purpose. The statement is accepted.

The learned counsel appearing for Respondent No.1 states that in case such an application is made by the Petitioners within a period of four weeks, the respondent No.1 shall consider it in accordance with law and pass orders thereon in accordance with law within a period of four weeks from the date of receipt of the application. The statement is accepted. In view of these statements, Petition is disposed of. Rule is discharged with no order as to costs. In case the petitioners make an application, the Respondent No.1 shall grant personal hearing to the Petitioners before disposing of that application.”

4. In March, 2007, the petitioner herein (the promoter) constructed a wall blocking the spot in the property which was suitable for construction of the flour mill, the respondent Nos.1 and 2 herein raised a protest upon which the S.R.A. amended the plan and indicated the benefit to which the respondent Nos.1 and 2 would be entitled.

“Although, this was done on 14th June, 2007, no further steps were taken by the petitioner herein or the authorities of the S.R.A. to implement the amended plan.”

5. The respondent No.1 thereupon made a representation to the Chief Executive Officer on 2nd August, 2006. Since despite a hearing having been given, no orders were passed on the representation, the respondent Nos.1 and 2 filed a Contempt Petition on 28th March, 2007. The same was dismissed on 26th September, 2007, upon the finding that the order passed on 8th April, 2005, wherein it had been found that the respondent Nos.1 and 2 were entitled to a commercial premises measuring 225 sq. ft.

which had been handed over by the petitioner herein to the S.R.A. for being made over to the respondent Nos.1 and 2, had been suppressed when Writ Petition No.990 of 2004 was disposed of.

6. Subsequent to the dismissal of the Contempt Petition, the respondent Nos.1 and 2 filed Writ Petition No.2298 of 2007 on 9th October, 2007, challenging the letter/order passed by the S.R.A. on 14th June, 2007 in response to the letter dated 8th February, 2007, written on behalf of the petitioner herein with regard to the proposed amended plan of the composite building of the S.R.Scheme on the plots bearing CTS Nos.545, 545/1 to 30, 546, 546/1 to 5 of village Kanheri, Kulupwadi, Borivali (East), Mumbai, wherein the petitioner was directed to comply with certain conditions.

7. Although, since according to the petitioner the conditions contained in the letter/order of 14th June, 2007, could not be complied with, the Division Bench by its order dated 13th March, 2008, impugned herein, directed the S.R.A. to act and ensure that the amended plan is fully implemented and the entire area measuring 225 sq. ft. was constructed and delivered to the respondent Nos.1 and 2 herein within a period of 8 weeks from the date of the order. While passing the impugned order, the High Court made it clear that the respondent Nos.1 and 2 herein would have to comply with the provisions of the law while obtaining requisite licences from the competent authorities.

“It was also made clear that the High Court was passing its order to resolve the limited controversy that the respondent Nos.1 and 2 were entitled to the commercial space which would have to be constructed in accordance with the plan sanctioned by the S.R.A. within the period indicated in the order.”

8. After the said order was passed, the petitioner/promoter was served with a letter written by the S.R.A. on 2nd April, 2008 requesting the petitioner to submit a plan for the flour mill with an area measuring 225 sq. ft. It is the petitioner's case that instead of challenging the directions contained in the order of the Division Bench of the High Court passed on 13th March, 2008, the S.R.A. was forcing the petitioner to implement the directions, which were contrary to the statutory provisions and the Building Rules. It is also the grievance of the petitioner that the Division Bench of the High Court had, by its impugned order, ignored all the facts and had directed the S.R.A. to construct the flour mill on the compulsory open space which would have the effect of blocking the access of the society members in contravention of the provisions of the Bombay Municipal Act, the Building Rules and the Slum Rehabilitation Scheme and in the process was also compelling the petitioner to make such unlawful construction.

9. It is on account of being aggrieved by the said directions of the Division Bench of the Bombay High Court in Writ Petition No.2298 of 2007, that the present special leave petition was filed by the petitioner herein.

10. Appearing for the petitioner, Mr. Shekhar Naphade, learned Senior Advocate, submitted that Writ Petition No.2213 of 2002 filed by the respondent No.1 for a determination that he

was having two commercial places, a flour mill and a godown, was dismissed on 9th September, 2002. The appeal preferred against the order dated 9.9.2002, being A.O. No.225 of 2003, was in its turn disposed of on 17th June, 2003, with leave to the respondent No.1 to make an application to the S.R.A., which was directed to consider the said application within a period of eight weeks after giving an opportunity of personal hearing to the respondent No.1. He then referred to various orders passed by the S.R.A., as also the High Court, and the counter-affidavit filed on behalf of the S.R.A. in which it had been stated that the respondent Nos.1 and 2 were jointly held to be eligible under the Scheme for a portion of the structure for commercial use as per the order passed by the Chief Executive Officer, S.R.A. on 10th December, 2003, under the Slum Rehabilitation Scheme. Thereafter, pursuant to the said order and after the order passed by the High Court in Writ Petition No.990 of 2004 on 27th July, 2006, the petitioner-Developer had submitted the amended plan for the flour mill and had requested that approval be given to the same. The said plans were, thereafter, approved by the S.R.A. according to the provisions of Clause 6.24 of the amended DRC-1991 Rule 33(10) read with Appendix-IV. The petitioner then applied for Commencement Certificate as per the approved plans.

“It was not, therefore, for the petitioner to challenge the amended plans which had been approved by the S.R.A. on the petitioner's own submissions.

In the said counter-affidavit, it was also stated that the amended plan submitted by the petitioner was for an independent ground floor structure and an application was also made by the petitioner- Developer for condonation of the open space deficiency to allow the structure to touch the compound wall. It is on such application that the open space deficiency of 100&percent; on 3 sides of the structure for independent commercial structure was allowed by the S.R.A. in accordance with the powers vested in the Authority under the amended Sub- regulation 6.24 of Rule 33(10) of DCR-1991.”

11. Mr. Naphade drew our attention to paragraph 9 of the counter-affidavit where it had been submitted by the S.R.A. that under the amended provisions of Rule 51(xvi) of DCR-1991 operation of a flour mill is permissible in a residential zone if it is in a single-storeyed detached structure or semi-detached structure and it was on such account that the S.R.A. had sanctioned a single detached structure for the flour mill as per the amended plan submitted by the petitioner. Mr. Naphade also drew our attention to the statement made by the S.R.A. that since no space was available in the complex for construction of a structure to house the flour mill as the rehabilitation building had already been constructed as per the revised plan, the S.R.A. had no option but to sanction the amended plan for the flour mill on the available open space on the application made by the petitioner to protect the interests of the eligible slum dwellers.

12. Mr. Naphade submitted that although Regulation 6.24 of the Development Control Regulation for Greater Mumbai, 1991, had been relied upon to justify the approval of the amended plans in relaxation of the Building Rules, the said provision was not intended to relax the said Rules in order to cover a situation like the present one.

Since the said Regulation has a bearing on the facts of this case, the same is reproduced hereinbelow:

“6.24 In order to make the Slum Rehabilitation Scheme viable, the Chief Executive Officer of Slum Rehabilitation Authority shall be competent to make any relaxation wherever necessary for reasons to be recorded in writing.”

13. Mr. Naphade contended that the petitioner was being asked to make a construction which was in contravention of the Building Rules and the orders and directions issued in that regard were liable to be quashed.

14. From the submissions of the learned counsel for the respective parties it is evident that the scope of the Special Leave Petition is very limited and is confined to the question as to whether having applied for and obtained sanction of the amended plan from the SRA for rehabilitating the flour mill of Respondent Nos.1 and 2, the petitioner can object to raising the construction as per the amended plan upon contending that the same was contrary to the Building Rules and was not, therefore, capable of being acted upon.

15. The fact situation in this case is quite simple. Upon adjudication by the SRA it has been established that the Respondent Nos.1 and 2 were eligible for a residential-cum-commercial structure measuring 275 sq.ft. under the Slum Rehabilitation Scheme for CTS Plot Nos.545 and 548 of village Kanheri Kulupwadi Road, Borivali (East), Mumbai.

“It appears from the submissions made on behalf of the petitioner that a space measuring 225 sq.ft.

had been kept apart in the main structure for the Respondent Nos.1 and 2 and possession thereof had been made over to the SRA, but since the same was not conducive to the operation of a flour mill in terms of the Building Rules, the same had remained vacant and a direction had been given to provide the Respondent Nos.1 and 2 with a structure detached from the main structure for running the flour mill, in keeping with the Building Rules.”

16. It has been brought to our notice that under the amended provisions of Rule 51(xvi) of DCR, 1991, operation of a flour mill is permissible in a residential zone if it is being operated in a single-storied detached structure or a semi-detached structure. In view of the above, an amended plan was submitted by the petitioner to the SRA for sanction of a detached structure which was situated in a portion of the area meant to be kept as open space, upon relaxation of the Building Rules. Despite recognition of their right to be provided with at least 225 sq.ft. for operation of their flour mill within the SRA Scheme relating to Plot Nos.545 and 548, Kulupwadi Road, Borivali (East) and sanction having been granted to the amended plan, till today such space has not been provided to the said respondents on one pretext or the other. The eligibility of the said respondents for being included in the said scheme was decided by the SRA in 2001, but on account of the recalcitrant attitude of the

petitioner, the Respondent Nos.1 and 2 were unable to obtain possession of such area for running their flour mill.

17. Although, Mr. Naphade tried to convince us that the amended plan had been approved by the SRA in violation of the Regulations, the actual reality is somewhat different. Under the Regulations related to the Slum Development Scheme, the SRA has been vested with authority to grant sanction to schemes upon relaxation of the Building Rules in order to further the policy of slum development. The present case is one of those cases where such power has been exercised by the SRA to provide suitable space to the Respondent Nos.1 and 2, who were eligible and entitled to receive the same under the scheme in question.

18. In any event, the sanctioning authority/SRA, has been vested with powers to relax the Building Rules under Regulation 6.24 to give effect to the policy of Slum Development and Rehabilitation. It cannot be ignored that it was the petitioner itself which submitted the amended plan for the approval of the SRA in order to provide suitable space to the Respondent Nos.1 and 2 to set up and run their flour mill in consonance with the Building Rules.

19. In our view, it is not for the petitioner to question the approval granted to the amended plan as the SRA was fully competent in law to grant such approval. The plea, which has now been taken on behalf of the petitioner, had not been raised earlier and the petitioner had, in fact, agreed to provide the Respondent Nos.1 and 2 with a separate accommodation for setting up and running their flour mill. It can only be presumed that a sudden change in attitude has occurred only with the object of trying to wriggle out of the commitment made to provide the respondents with the alternate space. We are unable to accept the stand taken by the petitioner since the right of the Respondent Nos.1 and 2 to receive 225 sq.ft. of covered space in the new construction by way of rehabilitation under the SRA scheme for the area is no longer *res integra*. Once the amended Building Plan was approved by the SRA, which was competent to do so, there could be no further objection on the part of the petitioner to act in terms of the amended plan and to provide the Respondent Nos.1 and 2 with the alternate accommodation as provided for under the amended plan.

20. We, therefore, see no merit in the Special Leave Petition, which is accordingly dismissed. The time for complying with the directions of the High Court is extended by a period of eight weeks from date.

21. There will be no order as to costs.