SUPREME COURT OF INDIA

Sonu Babu Bhambid

Vs.

Dream Developers

C.A.No.4583 of 2009

(S.B. Sinha and Deepak Verma JJ.)

21.07.2009

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. Appellants herein are slum dwellers. They and/ or their predecessors encroached upon a property bearing C.T.S. No. 61, Survey No. 59 in village Mulgaon. Indisputably, an agreement was entered into by and between the parties hereto with regard to their rehabilitation on C.T.S. No. 82, the relevant conditions whereof read as under:

> “3. Eligibility
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> “There are a number of huts which are existing on the slum property, whose names of occupant and structures are appearing in 1995 voters list and are occupying the same till date. It will be the responsibility and obligation of the occupant to obtain Eligibility Certificate by the Competent Authority. In case the Occupant fails to get such certificate this agreement will ipso facto come to an end and occupant will not have any rights against the party of the other part. The eligibility certificate to be issued by concerned Authority shall be final and binding.”
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> 4. Consent
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> Slum dwellers hereby agree and give consent to participate in SPA as per DCR (10), Appendix IV. If, however, the Developer is unable to implement SRA scheme due to any reasons, the occupant will still get the allotment of 225 sq. ft. carpet area on ownership basis form the Developer in this case the proposal will be sanctioned by MCGM. In other words, the interest of the occupant is safeguarded from all angles. The occupant is hereby aware and agrees to shift into permanent ultimate accommodation admeasuring 225 sq. ft. carpet area which will be consisted for them on CTS No. 82 village Mulgaon.”

3. Inter alia on the premise that the appellants failed to obtain eligibility certificate, the respondents started construction of commercial building on Survey No. 82.

4. The appellants filed a suit in the City Civil Court at Bombay which was marked as Short Cause Suit No. 7 of 2009 praying inter alia for a declaration:

> "(a) That this Hon'ble Court may be pleased to declare that the agreements under the head as Agreement between Slum dwellers and Developer as identical to Exhibit B to the plaint entered into on different dates between Defendant No. 1 and 2 and the plaintiff are effective, subsisting and binding on the parties and accordingly the plaintiffs are entitled to be provided a flat of carpet area of 225 sq. ft. in the plot CTS No. 62 situated at Moolgaon, Andheri (E) Mumbai;
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> b) that pending the hearing and final disposal of this suit any construction activities in view of the IOD dated 18-10-2007 CC dated 18-10-2007 and sanctioned plan dated 19th July, 2007 on CTS No. 82 situated at Moolgaon, Andheri (E) Mumbai be stayed in the interest of justice."

5. In the said suit, the appellants took out a notice of motion for grant of injunction for the following terms:

> "(a) the pending the hearing and final disposal of this suit, any construction activities in view of the IOD dated 19.07.07 CC dated 08.02.08 and sanctioned plan dated 19th July, 2007 on CTS No. 82 situated at Moolgaon, Andheri (E), Mumbai be stayed in the interest of justice."

6. The learned Trial Judge by an order dated 16.02.2009 opined that as the appellants failed to obtain an essentiality certificate and C.T.S. No. 61 was not declared as slum area, the question of taking recourse to the slum rehabilitation scheme did not arise. It was, however, held: ...I find much substance in the submissions made by the ld. Advocate for defendant that no residential premises can be constructed on C.T.S. No. 82 as it comes under the commercial zone and there is permission in respect of the construction of commercial premises only on C.T.S. No. 82 by the Municipal Corporation and as performance of the agreement between the defendants and slum dwellers cannot be specifically enforced, the reliefs as prayed in the notice of motion cannot be granted...

7. An appeal preferred thereagainst before the High Court has been dismissed by reason of the impugned judgment.

8. Mr. V. Shekhar, learned senior counsel appearing on behalf of the appellants, would contend that the City Civil Court and consequently the High Court committed a serious error in holding that no residential building could be constructed on C.T.S. No. 82. In this connection, our attention has been drawn to a letter dated 8.05.2009 issued by the Municipal Corporation of Greater Mumbai addressed to the Secretary, Durga Nagar Rahiwasi Sangh

that in case constructions of the buildings are not commenced, the permission can be modified in terms of Regulation 57(4)(C) of Development Control Regulations, 1991 and in that view of the matter as construction of a residential building is not prohibited by law, the provisions of Section 41(e) of the Specific Relief Act will have no application.

9. Mr. Sunil Gupta, learned senior counsel appearing on behalf of the respondents, on the other hand, objected to consideration of the additional document, viz., the letter dated 8.05.2009, on the premise that the same was procured subsequent to the passing of the impugned order.

10. Appellants are said to have been in possession of the property in question as trespassers. They are said to have acquired indefeasible title thereto by alleged possession for more than 30 years. It is not in dispute that for the purpose of attracting the rehabilitation scheme the area in question should be declared as a slum area. It is only for the said purpose, the appellants were required to obtain eligibility certificate. Grant of eligibility certificate was, thus, sine qua non for enforcement of the agreement dated 26.06.2005. As Clause 3 of the said agreement categorically provides that in case the occupants fail to get such certificate, the agreement would ipso facto come to an end and the occupants would have no right against the party of the other part, we are of the opinion that the High Court cannot be said to have committed any legal infirmity in passing the impugned order.

11. Respondents contend that as the eligibility certificate has not been obtained by the appellants, the agreement itself has come to an end. A finding to that effect has concurrently been arrived at by both the courts below.

12. Furthermore, indisputably, 66 persons were occupying the same plot No. 61. The suit, however, has been filed by 33 persons. The rest 33 persons, thus, have accepted that they had no right under the agreement. Consent of the appellants for their rehabilitation on C.T.S. No. 82, whereupon strong reliance has been placed by Mr. Shekhar, in our opinion, is not of much significance. The consent on the part of the appellants was merely one of the terms of the contract. But, if in absence of any eligibility certificate, C.T.S. No. 61 could not be declared to be a slum area, the scheme of rehabilitation and/ or relocation of the occupants thereof, in our opinion, would not arise.

13. We will assume that in terms of Regulation 57(4)(C) of the Development Control Regulations, 1991 modification in the matter of nature of construction was permissible in law. It is one thing to say that such modification can be directed to be granted but it is another thing to say that unless such an order is obtained, the occupants of the land would not be entitled to raise any construction other than the one provided for in the regulations itself.

14. The learned City Civil Court has categorically held that only commercial constructions could be raised on C.T.S. No. 82. The parties to the agreement did not file any application for modification of that plan. So long such modification is not granted, in our opinion, the restriction noted by the courts below shall remain operative. It is in that sense statutory

interdict shall have a role to play in terms whereof the respondents could not be permitted to raise constructions for residential purposes.

15. In any event, we, however, must notice that the appellants herein had merely filed an application for bringing the additional document on record. Indisputably, the said document was not filed before the City Civil Court. It was, therefore, obligatory on the part of the appellants to file an application for permission to file the said document by way of additional evidence in terms of Order XLI Rule 27 of the *Code of Civil Procedure*. The Supreme Court Rules prohibit placing reliance upon any document which was not part of the records of the courts below, save and except with the permission of the court.

16. A court of law before passing an order of injunction must take into consideration three relevant factors, viz., prima facie case, balance of convenience and irreparable injury. This Court in *Bombay Dyeing Manufacturing Co. Ltd. V. Bombay Environmental Action Group and Others*[1] held as under:

> "22. This Court at this stage is concerned with an interim order passed by the High Court. The writ petition is still to be heard. Affidavits between the parties are yet to be exchanged. The objection as regards maintainability of the writ petition is also required to be finally determined by the High Court itself. This Court at this stage cannot, thus, enter into all the contentious questions raised in these appeals. But, there cannot be doubt or dispute whatsoever that before an interim order is passed and in particular in a public interest litigation, the court must consider the question as regards existence of a prima facie case, balance of convenience as also the question as to whether the writ petitioners shall suffer an irreparable injury, if the injunction sought for is refused. The courts normally do not pass an interlocutory order which would affect a person without giving an opportunity of hearing to him...
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> [See also *Mandali Ranganna and Ors. etc. v. T. Ramachandra and Ors.*[2] *and Shridevi and Anr. V. Muralidhar and Anr.*[3]]"

17. Furthermore, when a court exercises its discretionary jurisdiction, the appellate court would be slow to interfere therewith unless sufficient and cogent reasons exist therefor. In *Manjunath Anandappa v. Tammanasa*[4], this Court held:

> "36. It is now also well settled that a court of appeal should not ordinarily interfere with the discretion exercised by the courts below.
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> 37. In U.P. Coop. Federation Ltd. v. Sunder Bros. the law is stated in the following terms: (AIR p. 253, para 8)
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> 8. It is well established that where the discretion vested in the court under Section 34 of the Indian Arbitration Act has been exercised by the lower court the appellate court should be slow to interfere with the exercise of that discretion. In dealing with the matter raised before it at the appellate stage the appellate court would normally not be

justified in interfering with the exercise of the discretion under appeal solely on the ground that if it had considered the matter at the trial stage it may have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. As is often said, it is ordinarily not open to the appellate court to substitute its own exercise of discretion for that of the trial Judge; but if it appears to the appellate court that in exercising its discretion the trial court has acted unreasonably or capriciously or has ignored relevant facts then it would certainly be open to the appellate court to interfere with the trial court's exercise of discretion. This principle is well established; but, as has been observed by Viscount Simon, L.C., in Charles Osenton Co. v. Johnston, AC at p. 138:

`The law as to the reversal by a court of appeal of an order made by a Judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well- settled principles in an individual case.'"

18. For the reasons aforementioned, there is no merit in this appeal which is dismissed accordingly with cost. Counsel's fee assessed at Rs. 10,000/-.

[1] *(2005) 5 SCC 61*
[2] *(2008) 11 SCC 1*
[3] *(2003) 10 SCC 390*
[4] *2007 (12) SCALE 234*