

SUPREME COURT OF INDIA

Best Workers Union

Vs.

State of Maharashtra

C.A.Jurisdiction SLP (Civil) No.23447 of 2008

(Aftab Alam and Dr. B.S. Chauhan JJ.)

15.01.2010

ORDER

1. Heard Mr. Shyam Divan, learned senior counsel appearing for the petitioner; also heard the Attorney General appearing on behalf of the Brihan Mumbai Electric Supply and Transport Undertaking ('BEST', hereinafter), 1 Mr. C.U. Singh, learned senior counsel for Municipal Corporation, Greater Mumbai and Mr. Sorabjee learned senior counsel representing respondent No.7.

2. The government of Maharashtra made an amendment in regulation 9 of the Development Control Regulations for Greater Bombay, 1991 and inserted an explanation into it vide notification dated July 27, 2006 issued under section 37(2) of Maharashtra Regional and Town Planning Act, 1966 ('the Act' hereinafter). On the basis of the amendment in regulation 9, the BEST entered into a development agreement dated May 18, 2007 with respondent No.7 in respect of a piece admeasuring 27,913.93 sq. metres, being part of a much larger block of land measuring 1,54,082.40 sq. metres that had come to the BEST following acquisitions made by the State government in the years 1973 and 1974 for its different purposes. In pursuance of the development agreement, and in the absence of any interim order of restraint by the court respondent No.7 went ahead with making constructions over the piece of land in question and we were told in the course of hearing that more than one multi storied buildings (over 40- stories each) were already constructed over the land.

3. The petitioner is a trade union of the workers of the BEST and it is recognized by the management as representative of the workmen. In that 2 capacity it assails the government notification amending regulation 9 and it also challenges the action of the BEST, on the basis of the amended notification, to give away a large chunk of its land, on long term lease (60 years and renewable), to respondent No.7.

4. Mr. Divan contended that the petitioner was a "person affected"

5. within the meaning of section 37 of the Act and it was, therefore, entitled to a personal notice and a right of hearing, apart from the public notice published in the Maharashtra Government gazette and two newspapers namely "Vartahar" (Marathi) and "Economic Times" (English). No personal notice was given to the petitioner and hence, the amendment notification dated July 27, 2006 was bad and illegal being in violation of the mandatory requirement of section 37 of the Act.

6. Mr. Divan next submitted that there was a large number of materials to show that the large block of land with the aggregate area of 1,54,082.40 sq. metres that had come in the hands of the BEST following acquisitions made by the State government in the years 1973 and 1974 had been sub- divided into 7 plots numbered as 1, 2A, 2B, 2C, 3, 4, 5. Plot No.2A, admeasuring 27,913.93 sq. metres, ear-marked for the BEST undertaking staff housing had remained vacant while all the other six remaining plots had already been put to different uses for the purposes of the BEST. The 3 development agreement between the BEST and respondent No.7 was in respect of plot No.2A. Mr. Divan further submitted that though the amended regulation 9 allowed the development of the sites reserved for the BEST for the designated user coupled with commercial user, the relaxation for commercial user was restricted to a maximum of 30% of the total permissible floor area. According to him, therefore, the commercial user of the land forming the subject matter of the development agreement could not exceed 30% of 27,913.93 sq. metres (with the FSI being 1) but the development agreement executed in favour of respondent No. 7 permitted commercial user of 39,291 sq. metres of built up which was even in excess of 100% of the area of the land. Mr. Divan submitted that the area of which commercial user was allowed to the respondent under the development agreement was not in relation to the area of the land forming its subject matter but it was apparently determined by taking 30% of the aggregate area (1,54,082 sq. metres) of the entire block of land. He also submitted that other mandatory conditions of the construction bye-laws were similarly purported to have been followed on the basis of the aggregate area of the total land being 1,54,082.40 sq. metres with the result that the statutorily required recreational grounds for the constructions made over plot No.2A (area: 27,913.93 sq. metres) were shown in the sanctioned plan scattered all 4 over the larger block of land (Area: 1,54,082.40 sq. metres) Mr. Divan lastly submitted that the alienation of the Corporation land was a very serious matter and it could only be sanctioned by the general house of the Corporation or one of its committees duly authorized in this regard. The General Manager of the BEST, on his own, was certainly not competent to give away large chunks of the Corporation land.

7. In reply to the petitioner's claim for a personal notice, Mr. Attorney General pointed out that the High Court had held the petitioner might be an 'interested person' but it was not an 'affected person' within the meaning of section 37(1) of the Act. He further added that the amendment notification dated July 27, 2006 was issued following the procedure laid down under section 37(1A) and any reference to the provisions of section 37(1) was quite misconceived. He stated that two letters of the State government sent on November 9, 1997 and June 17, 2003 asking the Corporation to take steps for amendment of regulation 9 went unheeded, and then the State government had to itself move to bring about the required

amendment in terms of section 37(1A) of the Act. The Attorney General pointed out that sub-section (1A), unlike sub-section (1) had no provisions for any notice or right of hearing to any affected person; it simply required a public notice and that requirement was fully complied with.

“Coming to the second point raised by Mr. Divan, the Attorney General submitted that any plea that all the lands held by the BEST had earlier undergone a division resulting in a number of sub-plots coming into existence and that the amended provision of regulation 9 was applicable plot-wise and would apply only to plot No.2A forming the subject matter of development agreement was quite unfounded. He submitted that different facilities, utilities, and services like bus depot, scrap yard, staff housing, approach road etc. were cited on the different portions of the land (1,54,082.40 sq. metres) simply for functional convenience and there was nothing to show any division of the land into sub-plots for the purpose of revenue records. Moreover, a bare reading of the notification dated July 27, 2006 would make it clear that the provision for commercial user of 30% of the permissible floor area was allowed for sites reserved for the BEST undertaking such as BEST bus depot, BEST bus station, BEST terminus, BEST bus station and staff quarters, BEST bus depot and transport carriage.”

8. In this connection, Mr. Sorabjee referred to the notice inviting tenders (AGM(C)/156/2006) for the development of plot No.2A at BEST Nagar, Oshiwara, Goregaon (West) for residential/commercial purposes. In the tender notice the total area of the plot was given as 27,913.93 but the BEST offered to the developers "Approximately area of 39,291 sq. metres for 6 proposed commercial development i.e. 30% built up area of total permissible floor area of entire acquired land". The tender notice gave rise to some confusion and a pre-bid meeting was held on September 8, 2006 to clarify the doubts/points of the prospective bidders in respect of the terms and condition of the tender document. The minutes of the meeting in the form Addendum/Corrigendum is as follows:

“Para No./ Points needs clarification Clarification given for clause No. Modification/ Addition/ & Page No. deletion to the existing clause from as decided in the meeting Tender 2, page 5 It has been mentioned that The plot is reserved for Bus the permissible area of Depot, Scrap yard and housing proposed development in residential zone. The would be approx. 39,921 expected non-refundable sqm (4,22,772 Sqft subject premium has been worked out to actual area constructed considering that the developer for commercial/ residential develops the plot for residential purpose), so the point raised purpose. However, if the was that since the tender is developer is able to obtain for development for approval from the statutory residential/ commercial, authorities concerned to there was doubt in respect develop it as commercial then of residential and he is welcome to do so and pay commercial aspect and the premium as per the relevant whether only 30% of the tender condition stipulate din total plot is reserved for the Form of offer of the tender residential/commercial document i.e. at the rate of 2.15 purpose. times the rate quoted

for residential development 7 Para 1, The plot is sub-divided and The sub-division of the plot as Para 4 so whether this plot would referred to in the tender is only have a legal entity separate a technical sub-division from from its entire holding, functional point of view of the which admeasures about BEST. However, as per law, 1,54,082.40 sqm. the plot in question cannot be considered as sub-divided with a separate legal entity. The developer can utilize the built up area of 39,921 sqm (i.e. 30% of the entire holding) on the plot area of 27,913 sqm. It is also likely that the percentage of commercial component may go upto 50% subject to State government sanction.”

9. As to the third objection raised by Mr. Divan regarding the competence of the General Manager of the BEST to enter into a development agreement with respondent No.7, there does not appear much substance in it since the Corporation and the BEST are appearing on the same side in this case and the Corporation in strongly supporting the stand of the BEST. It was also pointed out that at this stage there is no alienation of the land; there is only a development agreement. The stage of alienation will arise when lease deeds will be executed in favour of the nominees of respondent No.7 and then at that stage all the technical formalities will be complied with.

9. On hearing counsels for the parties and on a careful consideration of the materials on record, we find no merit or substance in the objections raised by the petitioners. We are clearly of the view that the matter does not warrant interference by this court. The SLP (Civil) No.23447 of 2008 is accordingly, dismissed. Following the order passed in the SLP (Civil) No.23447 of 2008, the SLP (Civil) No.3018 of 2009 also stands dismissed.