

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5414 OF 2002

Venus Housing Enterprises Appellant (s)

Vs.

Brihanmumbai Municipal Corporation & Ors..... Respondent (s)

O R D E R

The appellant claims to be the owner of final Plot No.874 of Town Planning Scheme No.IV, Mahim, Mumbai (hereinafter 'the Scheme', for short). Respondents 5 to 7 (for short 'tenants') are the tenants in regard to structure no.1 therein. The said plot no.874 facing Prabha Devi Road (later S.K. Bole Marg) on the one side and Cadell Road (later Veer Savarkar Marg) on the other side was earmarked for residential use in the said Scheme which came into force on 15.8.1963. The Asst. Engineer, Town Planning, Municipal Corporation for Greater Bombay ('the Corporation' for short) issued a show-cause notice dated 9.8.1990 under section 89 read with section 165 of the Maharashtra

Regional and Town Planning Act, 1966 ('the Act', for short) to the tenants calling upon them to show cause why they should not be evicted from the said structure in enforcement of the said Scheme. The said notice alleged that final plot no.874 was being put to non-conforming use in contravention of Regulation No.25 of the Regulations controlling the development of the area covered by the above final Scheme. The tenants showed cause in reply. They also filed a suit challenging the said notice. The interim prayer sought by them was rejected by the trial court, but on appeal, was granted by the High Court and confirmed by this Court.

2. On 10.4.2000, the Corporation withdrew the said show-cause notice in view of an undertaking submitted by the said respondents to withdraw the suit (Suit No.7011 of 1990 filed by them pending in the City Civil Court, Bombay).

3. Feeling aggrieved, the appellant-landlord of the premises filed WP No.1511 of 2000 for quashing the withdrawal letter dated 10.4.2000 and seeking a direction to the Corporation to forthwith implement the Scheme and the Regulations and for certain consequential reliefs. The High Court examined the matter, found that withdrawal of

show-cause notice was proper and not open to challenge and consequently, dismissed the writ petition by order dated 25.6.2001. The said order is challenged in this appeal by special leave.

4. Learned counsel for the appellant submitted that the tenants (respondents 5 to 7) were using the premises for running a showroom dealing in electrical appliances, for repairing air-conditioners and for charging batteries, which amounted to commercial/industrial use; that having regard to clause 25 of the said Scheme, the non-conforming use of any premises under the Scheme could continue only for a period of 16 years from the date on which the final Scheme came into force, and therefore, from 15.8.1979, the non-conforming user had to be discontinued; and that if the non-conforming use was continued thereafter it would be illegal and constitute an offence punishable under the Act and it was the duty of the Planning Authority to take action for demolition under section 90; and that the Corporation having taken such action for the continued violation by respondents 5 to 7 by issuing the show cause notice, ought not to have withdrawn the said notice.

5. The Corporation in its counter has given detailed reasons as to why it withdrew the notice after considering the representation/objections filed by respondents 5 to 7. The High Court has also referred to the said reasons in detail. It is sufficient to refer to some of them :

- (a) The Scheme, vide clause 1(0) provides that subject to the marginal open spaces prescribed under the Regulations, shops will be permitted along the frontage of plots enumerated in Appendix 'B' to the Scheme and the frontage of plots abutting the 18 roads enumerated therein. Appendix 'B' to the Scheme which lists final plots along the frontage of which shops are allowed, includes Final Plot No.874. The portion in the occupation of respondents 5 to 7 is situated along the frontage of Plot No.874 and thus use thereof as a shop is not a non-conforming user.
- (b) Section 89 of the Act refers to summary eviction of any person who continues to occupy any land which he is not entitled to occupy under the final Scheme. Admittedly, respondents 5 to 7 are not in unauthorized occupation of any land. Therefore, section 89 would not apply. As the show-cause notice was issued only under section 89 and not under any other provision, the same had to be withdrawn.
- (c) The show-cause notice clearly specified that it was issued in pursuance of an order of the Minister which required show-cause notice to be issued only in regard to another structure in Final Plot NO.874 in the occupation of M/s Parmy Manufactory Pvt. Ltd. The Minister's order did not relate to structure no.1 which was in the occupation of respondents 5 to 7. Consequently, the notice which was wrongly issued had to be withdrawn.

6. Learned counsel for the appellant contend that clause 1(o) of the Scheme permitted shops only in regard to plots facing a portion of Cadell Road (Veer Savarkar Marg) between Sayani Road and Dr. Annie Besant Road. According to him, Plot No.874 did not fall between Sayani Road and Dr. Annie Besant Road and therefore, shops were not permitted in regard to Plot No.874. Learned counsel for the Corporation and learned counsel appearing for respondents 5 to 7 rightly submitted that clause 1(o) read with Appendix 'B' made it clear that along the frontage of Plot No.874 shops were in fact permitted and as Plot No.874 faced two roads i.e. S. K. Bole Marg and Veer Savarkar Marg, shops were in fact permitted along the frontage on both the roads. The High Court has also examined this contention and recorded a finding of fact that there is no restriction in regard to existence of shops on the frontage of Plot No.874.

7. Some contentions were urged by the appellant in regard to the interpretation of clauses 25 and 28 of the Scheme. Respondents 5 to 7 also contended that the landlord should not be permitted to file a writ petition to challenge the withdrawal of a notice issued in regard to its premises, and thereby use the show-cause notice as a mode of trying

to evict a tenant thereby circumventing the laws relating to eviction. It is unnecessary to examine these contentions in this case. We are satisfied that on the facts and circumstances, the High Court has considered the reasons given by the Corporation for withdrawing the show-cause notice and found that the withdrawal was neither arbitrary, nor discriminatory, nor motivated. We find that the reasoning given does not suffer from any infirmity and, therefore, there is no ground to interfere with the withdrawal of the notice.

8. Appeal is, therefore, dismissed.

.....J
[R. V. Raveendran]

.....J
[Aftab Alam]

New Delhi;
October 16, 2008.