REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Special Leave Petition (C) No.18065 of 2018

MUNICIPAL COMMISSIONER, MUNICIPAL CORPORATION OF GREATER MUMBAI AND ORS. ... Petitioners

Versus

PANNA MAHESH CHANDRA DAVE AND ANR. ... Respondents

WITH

Special Leave Petition (C) No.18212 of 2018

AND
Special Leave Petition (C) No.18289 of 2018

AND
Special Leave Petition (C) No.18399 of 2018

AND
Special Leave Petition (C) No.18599 of 2018

AND
Special Leave Petition (C) No.18336 of 2018

AND
Special Leave Petition (C) No.18376 of 2018

AND
Special Leave Petition (C) No.18210 of 2018

J U D G M E N T

V. Ramasubramanian, J.

1. Challenging a common order passed by the High Court of Judicature at Bombay in a batch of twelve writ petitions, granting the relief of allotment of alternative site to the petitioners in eleven writ petitions (tenants) and granting the relief of consideration of a request for grant of TDR (Transferable Development Rights)/DRC (Development Right Certificate) to the petitioners in one writ petition (owners of the land), the Municipal Corporation of Bombay has come up with the present special leave petitions.

2. We have heard Mr. Shekhar Naphade, learned senior counsel appearing for the Municipal Corporation of Bombay and Mr. Siddharth Bhatnagar, learned senior counsel appearing for the

contesting private respondents.

3. The private respondents *herein* filed writ petitions on the file of the High Court of Judicature at Bombay challenging the demolition of the superstructures put up by them on a plot of land bearing CTS Nos.4009/1 to 4009/7 at Village Dahisar, Taluka Borivali, MSD Mumbai 400068. The case of the respondents 1 to 3 in Special Leave Petition (C) No.18376 of 2018 (who were the petitioners in Writ Petition No.3090 of 2017) was a little different from the case of the petitioners in the other 11 writ petitions.

4. The case of the petitioners in Writ Petition No.3090 of 2017 *(Respondents 1 to 3 in Special Leave Petition (C) No.18376 of 2018*), was that the aforesaid land originally belonged to one Mr. Dattatray Mahadev Angare as per the City Survey Record; that upon the death of the original owner, his wife Sushila was recorded as the owner in the revenue records in the year 1983; that upon Sushila's death on 15.03.1995, the names of her legal heirs, including the name of her son Mr. Suresh Angare were entered in the revenue record; that the said Suresh Angare died on 31.01.2008 leaving behind him

surviving, his widow and two sons, who were the petitioners in Writ Petition No.3090 of 2017; that those legal heirs thus became the owners of the aforesaid plot and the superstructures standing thereon; that the family of Dattatray Mahadev Angare had put up 11 structures, in the year 1955, on the said plot of land and the same was named as Jeevan Ganga Chawl; that those structures were let out to tenants; that in the year 1961, the superstructures were also assessed by the Municipal Corporation; that the owners were regular in paying tax to the Municipal Corporation, from the year 1961; that in view of the said assessment, the Chawl became a protected structure within the datum line of year 1962; that therefore the Chawl cannot be demolished or removed without providing permanent alternative accommodation to the tenants; that vide a notice dated 13.02.1979 issued under Section 351 of the Bombay Municipal Corporation Act, the Corporation Authorities claimed that 3 of those structures were illegally constructed and were liable to be demolished; that challenging the said notice, Sushila Dattatray Angare filed a civil suit and obtained an injunction against demolition; that again the Municipal Corporation issued notice dated

23.06.2008 to four tenants on the ground that Bharucha Road was to be widened and that those four tenants will be allotted alternate accommodation at Anand Nagar Municipal Market; that those four tenants expressed unwillingness to accept the alternative accommodation at that point of time; that thereafter Municipal Corporation again issued a notice dated 02.07.2016 to those four tenants offering a fresh allotment in the Municipal Retail Market; that subsequently the Corporation issued proceedings dated 11.04.2017 cancelling those allotments on the ground that those four allottees did not take possession; that again on 11.10.2017, the Corporation issued a fresh notice to those four tenants to vacate the premises within seven days; that on 26.10.2017, the officials of the Municipal Corporation suddenly landed up in the premises along with a police force from Dahisar Police Station and started demolishing the superstructures in which the tenants were carrying on business; that thereafter the officials of the Corporation forcibly removed all the eleven tenants from the premises and demolished their structures; that the officials of the Corporation did not even permit the tenants to remove their valuables including cash,

furniture and fixtures from the premises and that therefore after issuing a legal notice, the writ petitioners were conceded to approach the High Court.

5. While what is stated above, was the case of the petitioners in W.P. No. 3090 of 2017, the case of the petitioners in the other writ petitions was that they are tenants in respect of the 11 structures put up in the premises and that they have been forcibly evicted and the structures demolished without following due process of law.

6. The Corporation filed separate affidavits in reply to each of the writ petitions contending *inter alia* that Padmakar Javle Road, which is parallel to Dahisar Railway Station at East, provides the only access to the commuters approaching the Railway station; that the width of the road was only 5 meters; that considering the narrowness of the road and considering the need to allow access to fire brigade and ambulance in case of any untoward incident, the Municipal Commissioner, by his proceeding dated 15.01.1974 prescribed a Regular Line for the said Padmakar Javle Road upto 13.40 meters, in terms of the provisions of Section 297(1) of the Bombay Municipal Corporation Act; that when the Corporation took

steps for widening the road, a few people approached the City Civil Court and those who were found eligible were granted alternative premises; that the Municipal Corporation received a letter dated 10.03.2010 from the Deputy Collector and Competent Authority Borivali stating that the ownership of the land affected by the road widening, vested with State Government; that out of the 11 structures demolished by the Corporation, 4 were found to belong to persons who were eligible for alternative accommodation; that however even those persons had approached the Court by filing writ petitions; that those four persons did not accept the alternative accommodation despite repeated offers and, hence, the offer had to be withdrawn; that out of the remaining structures, 4 were found only to be illegal shanties and the names of persons claiming to be the owners of these shanties, are not reflected in *Annexure II* prepared by the Deputy Collector; that the Corporation was willing to grant necessary benefits such as TDR to the original owner of the plot of land which is affected by the road widening scheme; that the first respondent in Special Leave Petition (C) No.18376 of 2018 attended the meeting convened in this regard on 11.11.2017, but

failed to contact the office of the Chief Engineer (DP); and that therefore the writ petitions were liable to be dismissed.

7. After considering the pleadings and the contentions advanced on both sides, the High Court found that it was not even the case of the Municipal Corporation that they followed due process of law before demolishing the structures and that the action of the Municipal Corporation in demolishing the superstructures and taking forceful possession was high handed. But instead of granting the relief of restitution, the High Court granted one set of reliefs to the persons claiming to be the owners of the land and another set of reliefs to the tenants. It is enough to extract the operative portion of the order of the High Court to show the nature of the reliefs granted. It reads as follows:

> *"(i) It will be open for the petitioners in Writ Petition (L) No.3090 of 2017 to make an Application to the Municipal Commissioner for grant of TDR (Transferable Development Rights)/DRC (Development Right Certificate) in respect of the area out of the road widening. If such an Application is made, the Municipal Corporation or its appropriate authority shall decide the same within a period of 60 days from the date of filing of the Application. The decision taken thereon shall be communicated to the petitioners immediately thereafter. We clarify that we have made no adjudication on the title*

claimed by the said petitioners;

(ii) As regards the petitioners in all the other Writ Petitions, we direct the Mumbai Municipal Corporation to allot to the said Petitioners tenements having the size equal to that of their demolished tenements. The premises offered shall be in a vicinity of the demolished premises. The premises shall be such that the same will have a frontage on any of the main road;

(iii) The allotment of the premises shall be made to the said Writ Petitioners as expeditiously as possible and in any event on or before 30 June, 2018;

(iv) We make it clear that the allotment will have to be made free of cost. However, it will be open for the Municipal Corporation to impose appropriate terms and conditions;

(v) The Petitions are disposed of with the aforesaid directions;

(vi) All concerned to act upon an authenticated copy of this order.

8. Before proceeding further, it must be recorded that the High Court was actually convinced to order restitution, but the High Court refrained from doing so only due to the fact that a public road had already been constructed on the land. In other words, the High Court actually balanced the private interests of the respondents-*herein* and the public interest.

9. Despite the fact that the High Court merely granted limited reliefs and despite the fact that even according to the Corporation, four out of eleven tenants were eligible for alternative accommodation, which was in fact offered to them, the Municipal Corporation came up with twelve special leave petitions against the common order passed in twelve writ petitions. The only substantial questions of law sought to be raised by the petitioners were *(i) whether the High Court could have overlooked the readiness and willingness on the part of the Municipal Corporation to grant the benefit of TDR to the original owner of the plot of land; and (ii) whether the High Court was right in overlooking the prescription of a Regular Line way back in the year 1974 for the widening of the road from 5 meters to 13.40 meters.*

10. Though the aforesaid questions would not technically qualify as substantial questions of law of public importance, this Court ordered notice in the special leave petitions and also granted a stay of operation of the impugned judgment, on 30.07.2018 when the special leave petitions came up for hearing.

11. Subsequently on 05.12.2018 this Court disposed of four special leave petitions which arose out of writ petition Nos.3087, 3089, 3092 and 3095 of 2017, on the short ground that the Municipal Corporation had itself found the petitioners therein to be eligible for allotment of alternate accommodation. After so disposing of four out of twelve writ petitions on 05.12.2018, this Court proceeded to direct the Secretary of the Bombay High Court Legal Services Committee to examine the relevant records and to submit a report about the eligibility of the other tenants to alternate accommodation. This order was passed in view of the stand taken by the Municipal Corporation that the other tenants were not eligible for alternate accommodation as per the guidelines of the Mumbai Municipal Corporation. It will be useful to extract the order dated 05.12.2018 passed by this Court as follows:

> *"Applications seeking exemption from filing official translation of Annexures are allowed.*
> *Heard the learned Senior counsel appearing for the petitioners and the learned counsel appearing for the respondents.*
> *The respondents-herein filed Writ Petitions before the High Court of Judicature at Bombay claiming that they are the owners of the land and structures which were taken away by the Mumbai Municipal Corporation for widening of road without paying any compensation to*

them.
After hearing the parties, the High Court has disposed of the Writ Petitions with the following directions which are extracted below:-
(i) xx xx xx xx
(ii) As regards the petitioners in all the other Writ Petitions, we direct the Mumbai Municipal Corporation to allot to the said petitioners tenements having the size equal to that of their demolished tenements. The premises offered shall be in the vicinity of the demolished premises. The premises shall be such that the same will have a frontage on any of the main roads;
(iii) The allotment of the premises shall be made to the said Writ Petitioners as expeditiously as possible and in any event on or before 30th June, 2018.
(iv) We make it clear that the allotment will have to be made free of cost. However, it will be open for the Municipal Corporation to impose appropriate terms and conditions.

The Mumbai Municipal Corporation challenged the impugned order of the High Court by way of filing Special Leave Petitions before us.

Mr. Shekhar Naphade, learned Senior counsel appearing for the petitioners submitted that out of eleven respondents, who filed Writ Petitions before the High Court, four persons namely (i) Shri Bhimsen P. Singh, (ii) Mr. Anil Surajman Shukla, (iii) Mr. Muniram Shivpujan Gupta and (iv) Mr. Kantilal Girdhar Gandhi are eligible for allotment of alternative premises at a suitable place, as per the policy of the Mumbai Municipal Corporation, if they comply the conditions imposed by the said Corporation.
Therefore, Special Leave Petition No.17082/2018, Special Leave Petition No.18331/2018, Special Leave Petition No.18403/2018 and Special Leave Petition No.18384/2018 are disposed of recording the statement made by the learned Senior counsel for the petitioners.

> *So far as remaining seven respondents are concerned, four of them are not eligible as per the guidelines of the Mumbai Municipal Corporation and rest of the three are ineligible as per the Slum Rehabilitation Act.*
> *However, learned Senior counsel submits that in case those seven respondents produce relevant material, the Municipal Corporation, after examining the material and if it is satisfied, they are willing to extend the benefit as per the regulations and rules.*
> *In view of the stand taken by the learned Senior counsel for the Corporation, we direct the parties to appear before the Secretary, Legal Services Authority of the Bombay High Court and the said Authority will examine the relevant records produced by the petitioners as well as the respondents and submit a report before this Court about their eligibility in accordance with the guidelines of the State Government as well as the Municipal Corporation/Slum Development Authority.*
> *We direct the parties to approach the Secretary, Legal Services Authority of the Bombay High Court within a week's time from the date of receipt of the order to enable the said Authority to decide and submit a report expeditiously preferably within a period of eight weeks from the date of communication of this order. List the other Special Leave Petitions after Report is received from the Legal Services Authority of the Bombay High Court."*

12. Pursuant to the said order, the Secretary of the High Court Legal Services Committee, Bombay filed a report dated 07.02.2019. The important findings recorded in the Report of the High Court Legal Services Committee are *(1)* that the assessment certificate issued by the Corporation shows the existence of superstructures from a period prior to 1961 *(2)* that some of the respondents in the

special leave petitions were issued with notices under Section 3Z(2)(i) of the Slum Act and that they are eligible for permanent alternative accommodation, as they have produced electricity bill Gumasta Licence etc. from a period prior to 1995 while the cut-off date was only 01.01.2000 and (3) that the other respondents are also eligible for permanent alternative accommodation, as their superstructures were duly assessed in the year 1961 and indisputably, those structures were demolished on 26.10.2017.

13. The Municipal Corporation has filed an affidavit of objections to the Report of the High Court Legal Services Committee. It is claimed in the said affidavit that the respondents did not produce any proof of existence of superstructures prior to the Datum Line of 1962; that the shop owners failed to submit any valid, legal proof; that the land under reference was not declared as a slum under the Slum Act; that the owner of the land Smt. Geeta Angare had not submitted the names of the eligible tenants; that out of 11 structures, the occupants of 4 structures were already found eligible for alternate accommodation; that out of the remaining 7 structures, 3 have been

assessed to tax and that, therefore, in addition to the 4 structures declared eligible earlier, 3 more may become eligible for alternative accommodation.

14. Drawing our attention to the various documents and also to the Report of the High Court Legal Services Committee, it was strenuously contended by Mr. Shekhar Naphade that the grant of alternate accommodation cannot be claimed by the respondents as a matter of right, unless they fulfill the parameters fixed by the Municipal Corporation and that the ad-hoc identification of parties for the grant of alternate accommodation without any supporting documents would create huge disparities. The learned Senior Counsel has also assailed the findings of the High Court Legal Services Committee on the ground that those findings were not supported by any documentary evidence.

15. We have carefully considered the contentions of the learned senior counsel for the Municipal Corporation. We should point out at the outset that the legal heirs of the original owner of the land were the petitioners in one writ petition and eleven persons claiming

to be the tenants, were the petitioners in the other writ petitions. Insofar as persons claiming to be the owners of the land are concerned, the Municipal Corporation itself had conceded before the High Court that they were willing to offer TDR. In paragraph 15 of the affidavit in reply filed by the Municipal Corporation in Writ Petition No. 3090 of 2017, it was stated by the Municipal Corporation as follows:

> *"I say that the respondents Nos.2 to 4 are willing to grant the necessary benefit such as TDR to the rightful owner of the plot of land which is affected by road widening scheme. I say that the petitioner No.1 had contacted the officers at R/North Ward as regarding the issuance of TDR. The petitioner No.1 had attended the meeting in Asst. Municipal Commissioner, R/North office on 11th November, 2017, when she was informed that she has to contact the office of Chief Engineer (DP) along with relevant papers. I say that the petitioner had agreed and given assurance to the respondent that she will contact the said office for granting her TDR in lieu of land being acquired for the purpose of road widening. I understand that petitioner No.1 has not contacted the office of Chief Engineer (OP) for the reasons best known to her."*

16. After having stated so in their affidavit in reply, the Municipal Corporation ought not to have come up with a special leave petition even in respect of Writ Petition No.3090 of 2017. In fact one of the two substantial questions of law sought to be raised, which we have

extracted earlier, also concedes the position taken the Corporation that the respondents 1 to 3 in Special Leave Petition No.18376 of 2018 are entitled to relief. Therefore, we do not know how and why the Corporation is blowing hot and cold.

17. Insofar as those eleven tenants are concerned, the Corporation agreed both before the High Court and before this Court that four of them are entitled to alternate accommodation. Therefore, the special leave petitions filed in respect of those four have also been disposed of by the order dated 05.12.2018.

18. Therefore, we are left only with seven tenants. In the affidavit of objections filed to the Report of the High Court Legal Services Committee, the Corporation has conceded that three out of those seven tenants are also eligible. Therefore, ultimately the dispute has boiled down only to four tenants.

19. The High Court has recorded a finding of fact that the Municipal Corporation demolished the superstructures and took possession in a high handed manner. The Legal Services Committee has recorded a finding that the superstructures were in existence from a period prior to 1961. These findings of fact cannot be

interfered with by this Court in a special leave petition under Article 136 of the Constitution of India, unless the findings shock our conscience. The findings of the High court are not perverse. Therefore, we find absolutely no grounds to interfere with the judgment of the High Court. Hence, the special leave petitions are dismissed. No costs.

.....J
(N.V. Ramana)

.....J
(Vineet Saran)

.....J
(V. Ramasubramanian)

JANUARY 31 ,2020
NEW DELHI.