

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3185 OF 2022

(Arising out of SPECIAL LEAVE PETITION(CIVIL) NO. 3250 OF 2020)

SATWARATNA CO-OP HOUSING SOCIETY LTD. & ANR. ... Appellants

VERSUS

BHARAT PETROLEUM CORPORATION LTD. & ORS. ... Respondents

J U D G M E N T

INDIRA BANERJEE J.

Leave granted.

This appeal is against a judgment and order dated 25.04.2019 passed by the Division Bench of the High Court of Judicature at Bombay, allowing Writ Petition No. 1515 of 2017 filed by the Respondent No.1-Bharat Petroleum Corporation Limited and quashing an order passed by the Municipal Commissioner, Municipal Corporation of Greater Mumbai, granting permission for redevelopment of a building to M/s. Satwaratna Cooperative Housing Society Limited being the Appellant No. 1 before us, and hereinafter referred to as the Appellant-Society, subject to the conditions specified in the said order.

Sometime in 1972-73, a residential building consisting of Ground + three floors was constructed on Survey No. 103, Hissa No. 15 bearing CTS No. 35 and 39 at Village Mahul, Taluka Chembur,

Mumbai Suburburn District, Mumbai. As the building was over 40 years old and in a dilapidated condition, the Appellant-Society obtained consent of all its members and appointed the second appellant, i.e., M/s. Kishraj Developers, hereinafter referred to as the Appellant-Developer to redevelop the building. A registered Development Agreement was accordingly executed between the Appellant-Society and Appellant-Developer.

On or about 9th December, 2014, the Appellant-Developer approached the Municipal Corporation of Greater Mumbai with a proposal for redevelopment of the building in question. The reconstructed building was to comprise a stilt 7 upper floors.

By a communication No. CE/6794/BPES/AM dated 25.06.2015, the Municipal Corporation of Greater Mumbai disapproved the proposal as submitted by the Appellant-Developer. The Appellant-Developer was, however, given permission to reconstruct the building subject to compliance of the conditions stipulated in the communication. Upon receipt of the communication, the Appellant-Developer demolished the existing building. The 12 families who were members of the Appellant-Society were provided with alternative accommodation at monthly rent of Rs.18,000/- per month with 10% increase each year.

On 05.09.2015, after the occupants of the building vacated, the Municipal Corporation of Greater Mumbai granted commencement certificate to the Appellant-Developer enabling the Appellant-

Developer to commence construction of the building that was being redeveloped, upto the plinth level.

On 29.10.2015, the respondent No.1, Bharat Petroleum Corporation Limited, hereinafter referred to as Respondent-BPCL sent a lawyer's notice to the Municipal Corporation of Greater Mumbai, contending that the proposed re-development of the building in question would jeopardise the safety of the refinery of Respondent-BPCL as well as the safety of the inhabitants of the locality.

In the meanwhile, after grant of commencement certificate, the Appellant-Developer commenced construction, which was carried out upto the plinth level. Upon completion of construction upto the plinth level, the Appellant-Developer through its Architect approached the Municipal Corporation of Greater Mumbai, *inter alia*, seeking grant of completion certificate.

On or about 02.03.2016, an area admeasuring 362.16 sq. meters being the set back area in respect of the building under reconstruction was handed over to the Municipal Corporation of Greater Mumbai for which a receipt was duly granted to the appellants.

Pursuant to the objection raised by the Respondent No.1-BPCL, the concerned Executive Engineer of the Municipal Corporation of Greater Mumbai prepared an exhaustive note pointing out that there were existing buildings in the vicinity of the refinery of

Respondent-BPCL, which were higher than the building under reconstruction.

In the said note, it was pointed out that the proposed redeveloped building was to have a height of 23.90 sq. meters. In other words, it would only be a low rise building. Furthermore, the Appellant-Developer had given an undertaking of Police verification of the prospective buyers of the additional floors to be constructed in terms of the Development Agreement. The report apparently contained a list of other buildings of ground+ seven levels in the vicinity of the refinery of Respondent-BPCL, at an equal distance from the refinery, supported by photographs. However, in view of the objection of Respondent-BPCL, a stop work notice was recommended, on condition that Respondent-BPCL would be liable for legal proceedings, damages, claims for compensation and the like.

On 05.04.2016, the Municipal Commissioner issued a stop work notice directing the appellants to stop redevelopment work of the building in question. It is alleged that the appellants were not provided with a copy of the complaint made by the Respondent-BPCL. They were also denied completion certificate to continue construction.

In the circumstances, the Appellants filed a writ petition in the Bombay High Court being Writ Petition No. 1418 of 2016. By a judgment and order dated 23.02.2017, the Bombay High Court

disposed of the said writ petition No. 1418 of 2016 by directing the Municipal Corporation of Greater Mumbai to take an appropriate decision having regard to the materials on record and to pass a brief reasoned order on the issues raised by the respective parties.

Thereafter, on 28.02.2017, the appellants submitted their representation placing reliance on the note dated 11.03.2016 prepared by the concerned Executive Engineer of the Municipal Corporation of Greater Mumbai. On 20.03.2017, the Respondent No.1- BPCL submitted a detailed representation putting forward its claims before the Municipal Commissioner after which on 21.03.2017, the Appellant-Developer made a further representation to the Commissioner, *inter alia*, assuring the Municipal Commissioner that requisite precautions would be taken by the Appellant-Developer while selling the additional flats to prospective buyers, to address the apprehensions/concerns of Respondent-BPCL.

The Municipal Commissioner of the Municipal Corporation of Greater Mumbai held formal hearings on 22.03.2017 and 27.03.2017 and thereafter passed a reasoned order dated 16.05.2017 granting permission to the Appellants to continue with the construction subject to the conditions stipulated in the said order.

The Respondent-BPCL filed the writ petition Writ being Petition No. 1515 of 2017 in the Bombay High Court challenging the

order of the Municipal Commissioner. On 12.09.2017, the Bombay High Court directed that status quo as on that date be maintained.

In the meanwhile, pursuant to the order dated 16.05.2017 passed by the Commissioner, Municipal Corporation of Greater Mumbai, the Appellant-Developer had recommenced the construction. In view of the order of status quo the work of reconstruction had to be halted. By the impugned judgment and order, the High Court has allowed the writ petition and quashed the order dated 16.05.2017 of the Municipal Commissioner of the Municipal Corporation of Greater Mumbai.

The High Court meticulously recorded the submissions made on behalf of Respondent-BPCL, took note the nature of the activities of the refinery of Respondent-BPCL and observed that the Municipal Commissioner had downplayed and virtually ignored the security concerns expressed by the Respondent-BPCL. The High Court observed :

"47. For one, the concern is founded on two critical aspects. First is safety. Now, natural calamities come uninvited. On such occasions, it is the normal and ordinary expectation of the general public and those caught in and are victims of calamities, that rescue operations are commenced forthwith. The response, therefore, ought to be almost immediate. The teams and squads in-charge of emergent relief and rescue measures ought to reach the site within minutes and not hours. If the construction and development in the vicinity of the refinery is not regulated, restricted and controlled, then, a natural calamity can never be tackled properly if not averted altogether. When bureaus in charge of climate and weather can now foresee a cyclone, heavy to very heavy rainfall causing floods, mudslides, landslides, etc. then, adequate safety measures have to be taken by making suitable advance arrangements. Huge amount of machinery and manpower has to be deployed even before the calamity strikes and it must be totally geared up, prepared so as to minimise the loss to life and property. A refinery is not comparable with any other

establishment. Its existence meets and satisfies the Nation's fuel requirement. Given its prominence, a refinery has to be protected and safeguarded in a manner excelling every other building. It has to be equipped from within and must receive total outside support so as to meet a natural and man-made calamity and disaster. A refinery catching fire means enormous loss to the public exchequer. The operations in such establishment go on round the clock (24x7) They would be at a standstill if a major fire, explosion, accident, etc. occurs. The Commissioner appears to be wholly oblivious to all this. It never strikes him that it is the Municipal Corporation which stopped the construction when above concerns were expressed, then, how can the Municipal Corporation be justified in taking a U-turn now ought to have entered his mind. Far from it, even though there was nothing on record to arrive at a conclusion that all concerns of the petitioner are no longer subsisting, the Municipal Corporation has in the impugned order gone back and allowed resumption of construction. This is wholly inexplicable and the approach is wholly perfunctory.

48. Secondly, the security of the refinery is of paramount consideration. That must prevail over a commercial or private business enterprise. The refinery under continued threat of the nature highlighted above means risk to human life, threat, to the economy and loss of reputation of the State as a whole. The world at large will ridicule us if a prime refinery in Mumbai is destroyed by terrorists and subversive activities of a handful. One can only imagine the magnitude of the financial and economic loss in the event such activities stall or obstruct production of petroleum products.

49. The decision making should not be influenced by any other except the above yardsticks and parameters. The above is not the manner in which these matters have to be decided. In the first instance, this Court itself would have gone into the concerns expressed by the petitioner and equally considered the versions of respondent Nos. 3 and 5. However, it gave an opportunity to the Municipal Corporation to have a second look particularly because it had earlier issued a stop-work notice. There is not a word as to why a stop-work notice was issued in the year 2016 despite all permissions and approvals in place. If the Municipal Corporation found substance in the complaint of the petitioner and its genuine concerns leading to the issuance of stop-work notice, then, we do not understand the turn around. This turn around is virtually fatal. If such high level officials and particularly, drawn from Indian Administrative Service and working as Municipal Commissioners take a pedantic view in a matter of national importance and concerning public safety, then, we are compelled to hold that their approach overlooks the very object and purpose of a planning legislation."

There can be no doubt, as observed by the High Court, that natural calamities come uninvited. There are possibilities of cyclones, heavy rainfalls, floods, mudslides, landslides and the like. However, the connection between reconstruction of a dilapidated building that had been in existence and the possibility of natural calamities is difficult to perceive.

There can also be no doubt that a refinery is not to be compared with other establishments. A refinery has to be protected. However, when there is no law which provides for a buffer zone between a refinery and other constructions, it was rather harsh to comment that the Commissioner had been wholly oblivious to the security and safety concerns of the Respondent-BPCL, more so when the Municipal Commissioner had given direction for round the clock security, police verification of prospective flat buyers, etc.

It is rather surprising that the High Court should have taken exception in the impugned judgment and order to the fact that the Municipal Commissioner had issued a stop work order but later passed the impugned order. The High Court remarked :-

*"49. ******

There is not a word as to why a stop-work notice was issued in the year 2016 despite all permissions and approvals in place. If the Municipal Corporation found substance in the complaint of the petitioner and its genuine concerns leading to the issuance of stop-work notice, then, we do not understand the turn around. This turn around is virtually fatal. If such high level officials and particularly, drawn from Indian Administrative Service and working as Municipal Commissioners take a pedantic view in a matter of national importance and concerning public safety, then, we are compelled to hold that

their approach overlooks the very object and purpose of a planning legislation."

The High Court appears to have overlooked the note of the Executive Engineer concerned and the advice to issue a stop work order at the risk of the Respondent-BPCL of the costs and consequences of the stop work order. It is patently obvious that the stop work order was a temporary measure pending further consideration of the objection raised by the Respondent-BPCL to the reconstruction of the building. If anyone were to be aggrieved by the stop work order, it was really the appellants and/or the flat owners temporarily shifted elsewhere, and not any one else.

There can be no doubt that the security of the refinery is of paramount consideration. However, in the absence of any law which provides for a buffer zone between a refinery and a residential building as observed hereinabove, the owner of land cannot be prevented from the right to utilize the land effectively including the right to carry out redevelopment and/or reconstruction in accordance with law and the Rules and Regulations with regard to the construction of buildings.

The High Court took note of the provisions of the Maharashtra Regional Town Planning Act, 1966, hereinafter referred to as the 'MRTP Act' and in particular, Chapter III thereof, titled "Development Plan". Unfortunately, the MRTP Act does not contain any specific provision which prohibits or even restricts the

construction of a building in the vicinity of a refinery. The Development Control Regulations for Greater Mumbai, framed under Section 22 clause(m) of the MRTP Act, requires measures of safety and public interest to be taken into consideration. There cannot be any question of haphazard constructions or control free development. However, in the impugned judgment and order there is no specific finding of contravention by the Appellants of any particular statutory provision or of any particular Rule or Regulation in redevelopment of the building in question. The High Court further observed as hereunder :-

"53. xxxxxxxx

That the factories, industries and installations dealing with inflammable and obnoxious substances and products by themselves present a threat to the life of the people residing in buildings within their proximity. If the people residing there are likely to face serious health issues on account of emission of gases and toxic substances, leakages and accidents in these installations, then all the more, the stand of the Municipal Corporation, when it agreed to resettle and rehabilitate the project affected persons to a locality other than Mahul and the present departure therefrom cannot be reconciled. We have witnessed a totally opposite approach in this matter. The Municipal Corporation is aware of such installations going by the nature in residing within close vicinity of such installations going by the nature of the activities in such installations. They are hazardous to health and in the case of a mishap would result in death or loss of limbs. If instances of leakages and accidents occur frequently and poisonous gases are released day in and day out from such installations, then, it would not be possible to save human lives or to retrieve persons caught in such accidents. Some of them may be employees of the refinery. They have to be rescued and brought out, For that, a, huge emergency plan has to be drawn up and implemented. The areas have to be evacuated so that emergency vehicles can reach such installations in record time. If these vehicles do not reach and the necessary manpower is not able to access the sites of such installations expeditiously and quickly, then, precious human lives would be lost. Therefore, there is not only a threat perception of the nature presented by Mr. Singh, but existence of vital installations like a refinery by itself enhances the possibility of danger and harm to the people. The nature of the activities in refineries and like installations cannot be wished away, ignored or brushed aside so lightly and casually as has been done in the present

case. Nobody can assure or guarantee that despite strict security and safety measures, no accidents will occur in future. None can guarantee that there will be no explosion or no leakage. When there are number of hazardous industries in Mumbai Sururban, Thane and Palghar Districts, and the accidents in such industries have resulted in loss of precious human lives and destruction of property, then all the more, we are unable to sustain the approach of the Municipal Corporation and the Municipal Commissioner. For instance, every factory manufacturing hazardous goods and products has witnessed at least one fire and explosion, it comes uninformed and unpredicted and at odd hours. Thereafter, we have seen a rush to the site and emergency vehicles have to be brought from all over so as to commence the rescue operations. There is a salvage operation also to be carried out. All this requires areas within the vicinity of such industries to be kept open from human occupation. If human beings reside very freely in these localities, then, they may also be victims. The construction activity cannot be controlled, but if not checked at the right moment, increases the harm and danger assuming that such checks do not necessarily guarantee and ensure safety of the occupants. The occupants face a continued risk to their life and to their property. That is not minimised by passage of time. Rather, by passage of time, it increases. The population expansion and its pressure is bound to result in more serious accidents or incidents of the nature described above. Pertinently, in the impugned order, the Municipal Commissioner does not conclude that the concerns of the petitioner are imaginary and not real. There is a reason for stressing on safety, security issues repeatedly. The petitioner has not been held guilty of exaggerating them. To then not take cognizance of such issues and matters by holding that there is no law setting a regime like creation of a buffer zone is to neglect and gloss over the same. There is no prohibition in law to be wise enough and to do everything to avoid a disaster and catastrophe.

54. We have not seen any attention paid by the Municipal Commissioner to the above aspects. Equally, we have not seen in the impugned order, the Commissioner taking into consideration the apprehensions expressed by the petitioner. The petitioner points out as to how the vital installations are targets of terrorists and the activities of this nature are carried out throughout the world. Such installations are regular targets. To paralyse the economy and to block the regular supply of petroleum products that regularly the refineries are attacked. Merely because after 26th November, 2008, no terrorist attack or bomb blast has taken place in the city of Mumbai does not mean that there will be no recurrence of the same in future. In fact, because of the high alert and strict vigil that such attacks are averted. Moreover, sustained efforts in improving the standards of safety and security would not necessarily guarantee that in future, there will be no attacks mounted on all vital installations in the city of Mumbai. In fact, the recent developments denote that on several occasions and particularly when there are such

incidents in the neighbouring countries, an alert is sounded, cautioning all concerned, by the Intelligence Agencies in India. They alert everybody, including parties like the petitioner and request them to take additional protective and safety measures. They place the installations like the petitioner in high risk zone. Additional forces are deployed and we see their presence round the clock. In fact, the concerns expressed by the petitioner have not been addressed by the authorities. We cannot be unmindful of the fact that despite high level meetings convened, no comprehensive policy measures are taken. It is left to the petitioner to upgrade its safety measures. It is left to the petitioner to then deploy additional security officials. It is only left to the petitioner then to strengthen its boundaries and compound walls. However, this is an individual endeavor. A comprehensive action plan has to be put in place. That is not only by the planning authority and Ministry, but, equally by the Central Government and Central Industrial Security Forces and agencies like the same. They have to sit together and draw up a contingency and security plan. We hope and trust that it would be done expeditiously."

In making the observations the High Court completely lost sight of the fact that a building was already in existence. The residents have been vacated for construction of a new stronger and better building. Only a few additional floors were being added, which did not contravene any Rules or Regulation.

In our considered opinion, the High Court patently erred in arriving at its effective finding that permission for reconstruction could even be refused in the absence of any law, rule or regulation demarcating a buffer zone around a refinery.

Regulation 16 of the DC Regulations of 1991 pertaining to the construction of buildings is extracted hereinbelow for convenience:-

"16. Requirements of sites - No land shall be used as a site for the construction of buildings -

(a) if the Commissioner considers that the site is insanitary or that it is dangerous to construct a building on it or no water supply is likely to be available within a reasonable period of time.

(b)-(d) * * *

(e) If the use of the said site is for a purpose which in the Commissioner's opinion may be a source of danger to the health and safety of the inhabitants of the neighborhood.

(f)-(m) * * *

(n) if the proposed development is likely to involve damage to or have deleterious impact on or is against urban aesthetics or environment or ecology and/or on historical/architectural/aesthetical buildings and precincts or is not in the public interest."

The said Rule provides that if the Commissioner considers that the site is insanitary or it is dangerous to construct a building on it or water supply would not be available within a reasonable period of time, the land is not to be used as a site for construction of building. The Commissioner may also prevent the use of land as a site for construction, if the use of the said site is for a purpose which might in the Commissioner's opinion be a source of danger to the health and safety of the inhabitants of the neighbourhood. To cite an example land may not be used for a purpose which is likely to cause environmental pollution. Permission to construct may be refused on land which is not fit for construction, such as swampy or low lying land. The Commissioner might even disallow the use of land for construction of buildings if the proposed construction is likely to cause damage or have deleterious impact on or is against urban aesthetics or endanger environment or ecology and/or historical/architectural/aesthetical buildings and precincts or is not in the public interest. It is for the Commissioner to take a

call taking into account relevant factors. It is not for the High court, exercising jurisdiction under Article 226 of the Constitution of India to sit in appeal over the decision taken by the Municipal Commissioner.

In exercise of jurisdiction under Article 226 of the Constitution of India, the High Court is only to examine whether the Municipal Commissioner acted within the limits of his jurisdiction and examine whether there was any such legal infirmity in the decision making process which vitiated the decision.

In this case, the High Court has in effect and substance sat in appeal over the decision of the Municipal Commissioner. The Municipal Commissioner took note of the existence of buildings in the vicinity and the existence of higher buildings at a lesser distance from the refinery. The Municipal Commissioner rightly took note of the fact that the building was being redeveloped. It was not a case of new construction.

At the cost of repetition, it is reiterated that in the absence of any law, Rules or Regulations which prohibited the construction of a seven storeyed building at the site in question, the descretion of the Municipal Commissioner was not liable to be interfered with.

The impugned judgment and order passed by the High Court of Judicature at Bombay cannot be sustained.

The appeal is accordingly allowed and the impugned judgment and order is set aside.

To show the bona-fides of the Appellants, Mr. Rishi Malhotra, learned counsel appearing on behalf of the appellants, has on behalf of his clients even made an offer to sell the additional floors in the building to the Respondent-BPCL or to any other Government Organization willing to purchase the same, subject to payment of the market value. The Appellants may issue advertisements for sale of the additional flats indicating that preference would be given to the Respondent-Corporation and to Government/Public Sector Undertakings. In the event, the Respondent-BPCL or any other Government or public sector undertaking makes an offer to purchase the additional flats at the market value, the additional flats shall be sold to them, subject to the requisite formalities.

....., J.
(Indira Banerjee)

....., J.
(A.S. Bopanna)

New Delhi;
April 26, 2022.