

CASE NO.:
Appeal (civil) 984-986 of 2005

PETITIONER:
M/s Trig Guards Force Ltd

RESPONDENT:
Maharashtra Indus. Dev. Corpn. & Ors

DATE OF JUDGMENT: 06/12/2007

BENCH:
Dr. Arijit Pasayat & P. Sathasivam

JUDGMENT:
JUDGMENT

CIVIL APPEAL NOS. 984-986 OF 2005

P. Sathasivam, J.

1) M/s Trig Guards Force Ltd., New Bombay, aggrieved by the order dated 1.8.2002 passed in Writ Petition No. 3997 of 2002, Order dated 22.1.2003 passed in Review Petition No. 98 of 2002 in W.P. No. 3997 of 2002 and Order dated 17.2.2003 passed in Writ Petition No. 864 of 2003 by the High Court of Judicature at Bombay, has filed the above appeals by way of special leave petitions.

2) Brief facts are as follows:

According to the appellant, they constructed commercial structures consisting of nearly 50-60 shops in a slum area known as Turbhe Slum, Turbhe Village facing Thane-Belapur Highway Road. One of their shops bearing No. 6104 was a single storey building/structure built in and was in existence long before 1.1.1995 i.e., the notified date fixed for protected structures under the Maharashtra Slums Clearance & Improvement Act, 1971 (hereinafter referred to as "the Slum Act") and as per the Government Resolution and Notification issued from time to time. The said building was assessed for Municipal Tax prior to 1.1.1995 and in this regard the assessment was carried out by the Assessment Department of Navi Mumbai Municipal Corporation. The said Bill shows that the assessment was levied from 1994-95 and there was electric connection in the said building since long. The area was constructed under Section 47 of the Slum Act. The provisions of Municipal Laws and other laws were not applicable in respect of the said shops/structures and have to be governed as per the provisions of the Slum Act. The Deputy Engineer, M.I.D.C. Division-II (Respondent No.3 herein) wanted to evict the appellant from the said shop with ulterior motive and mala fide intention. Behind the aforesaid shop/shops (on Turbhe Village Thane-Belapur Highway Road), there is a Hotel Centre Point. The said Hotel had no direct access on the Highway. Respondent No.3 with a mala fide intention to give direct access to respondent No.4 from eastern side of the Hotel i.e., directly on the Highway camouflaged a notice to demolish the structure on non-existing grounds. The said notice did not fulfil the mandatory requirement of at least 30 days notice as required under Section 53(1) of the MRTTP Act. By the said notice, respondent No.3 without any enquiry as to whether there was existence of ground under Section 52(1) of MRTTP Act, directed the appellant to demolish the structure/shop. When the appellant challenged the action of the official respondent on the basis of the lay out plan (which

was not shown to them), their writ petition was dismissed by the High Court. Review Petition filed by the appellant was also dismissed on the same grounds. Meanwhile, on the application of the 4th respondent-Hotel Centre Point, an order was passed by the official respondent providing way to the main Highway after demolishing the shop/shops. Again the appellant approached the High Court by way of a writ petition namely, W.P. No. 864 of 2003. By order dated 17.2.2003, the Division Bench of the High Court placing reliance on its earlier order dated 1.8.2002 passed in W.P. No. 3997 of 2002, order dated 22.1.2003 passed in Review Petition No. 98 of 2002 and finding no merit, dismissed the said writ petition, hence, the present appeals before this Court.

3) Heard Dr. Rajiv Dhawan, learned senior counsel appearing for the appellant and Mr. Shyam Divan, learned senior counsel appearing for MIDC.

4) Dr. Rajiv Dhawan, learned senior counsel, for the appellant made the following contentions:

(i) The MIDC had no basis to demolish the premises of the appellant.

(ii) Due process requirements under the statutes were not followed by the official respondents.

(iii) There was no application of mind by the MIDC in so far as:

(a) the appellant was the lawful owner of the premises;

(b) the premises were in a sanctioned layout scheme;

(c) the area was a protected slum area;

(iv) There was no effective hearing granted to the appellant prior to the demolition which violates the principles of natural justice.

(v) The appellant was denied information which formed the basis of the impugned judgment of the High Court.

(vi) The High Court exceeded its jurisdiction in granting legal sanction to the authorities to demolish the premises without an effective hearing, without due notice and without supplying any information to the appellant.

(vii) The action of the authority favouring 4th respondent-Hotel Centre Point is mala fide one.

5) Mr. Shyam Divan, learned senior counsel, appearing for MIDC refuted all the above contentions. According to him, if it is a Slum Area, there must be a specific notification, in the absence of such notification, the claim of the appellant that their premises lie in Slum Area cannot be accepted. He denied the allegation that action was taken at the behest of 4th respondent-Hotel Centre Point. He finally contended that the statutory scheme provides appeal and revision, without exhausting the same, writ petitions before the High Court are not maintainable.

6) We considered the relevant materials and rival contentions of the learned senior counsel appearing on either side. We also perused the orders of the High Court dated 1.8.2002 in Writ Petition No. 3997 of 2002, dated 22.1.2003 in Review Petition No. 98 of 2002 as well as order dated 17.2.2003 in Writ Petition No. 864 of 2003. In the first order, the Division Bench of the High Court, after holding that since the appellant had encroached upon the road and constructed a ground, two storeyed structure which is wholly unauthorized, confirmed the notice issued for demolition and dismissed the first writ petition. While considering the review petition, the Division Bench after perusing the plans provided by MIDC and finding that the appellants have raised unauthorized construction on the area demarcated for road dismissed the same. When the appellants filed another writ petition, namely, Writ Petition No. 864 of 2003, the Division Bench, after noting that earlier orders were passed based on

the plans produced by the MIDC and of the fact that the appellant had raised unauthorized construction on the area demarcated for road, dismissed the said writ petition. Though Dr. Rajiv Dhawan, learned senior counsel, appearing for the appellants took us through various provisions of the MRTTP Act and contended that the official respondents were not justified in demolishing their structure, we are not inclined to go into those aspects in the light of the order to be passed hereunder.

7) Inasmuch as the main grievance of the appellant was with regard to the orders passed by the High Court based on the plans produced by MIDC and the appellant was not aware of those materials which were relied on by the High Court, we inclined to remand the matter to the High Court. Since the issue relates to demolition of structures and in the light of assertion of the appellant, we are of the view that ends of justice would be met by fresh disposal after affording opportunity to all the parties. It is made clear that we are not expressing anything on the stand taken by the appellant as well as by the respondents including MIDC. In view of the same, we set aside the order dated 17.2.2003 passed by the High Court in W.P. No. 864 of 2003 and restore the said writ petition on its file. The High Court is requested to dispose of the same afresh after affording opportunity to all the parties. They are at liberty to place their respective claim by way of an affidavit/counter affidavit supported by documents within a period of four weeks from the date of receipt of the copy of this judgment and thereafter it is for the Division Bench of the High Court to decide the writ petition on merits as early as possible.

8) The Civil Appeals are disposed of on the above terms. No costs.