

PETITIONER:
P. NAVIN KUMAR AND OTHERS

Vs.

RESPONDENT:
BOMBAY MUNICIPAL CORPORATION AND OTHERS

DATE OF JUDGMENT: 26/04/1999

BENCH:
D.P.Wadhwa, N.Santosh Hedge

JUDGMENT:

D.P. WADHWA, J.

Petitioner - Indian Heritage Society and others are aggrieved by the judgment of the Bombay High Court dated September 11, 1996 holding that construction of toilet block near "Gateway of India" in Mumbai by the Municipal Corporation of Greater Bombay is valid.

The petitioners had filed writ petition in the Bombay High Court as Public Interest Litigation praying for a writ of certiorari or any other appropriate writ, order or direction to quash and set aside all permissions and sanctions granted by the Municipal Corporation of Greater Bombay and the Municipal Commissioner for the construction of "new public toilet block abutting the sea on the northern side of the plaza of the Gateway of India and for the demolition of the existing old toilet block". A writ of mandamus was also sought directing Indian Hotels Company Ltd. to take all necessary steps under the provisions of the Maharashtra Regional and Town Planning Act, 1966 to prevent and prohibit the Municipal Corporation of Greater Bombay, the Municipal Commissioner and the State of Maharashtra from proceeding with the construction of the said new toilet block and for demolition of old toilet block. Lastly, the petitioners prayed requiring Union of India in the Ministry of Environment and Forests to take necessary steps under the provisions of Environment (Protection) Act, 1986 to prohibit the aforesaid respondents from proceeding with the construction of the said new public toilet block. There was also a prayer for demolition of the existing old toilet block and of whatever construction of the new public toilet block was there. In short the writ petition was directed against the construction of the new toilet block near the Gateway of India and for demolition of the old toilet block.

High Court in the impugned judgment said that it was not a fit case for interference under Article 226 of the Constitution when the Municipal Corporation was providing a facility which is a must for the human beings at a place which is visited by thousands of persons everyday. It said that facility of providing toilet block was also to prevent nuisance because there could be unauthorized use of the open

spaces around the Gateway of India by persons to answer calls of nature. It was noticed that the resolution to construct toilet block was passed as far back on August 5, 1991 and till after the toilet block was constructed the writ petition was filed only March 13, 1992. After having said so High Court also examined the merits of the case and dismissed the writ petition. Interim relief which the High Court had granted from using the new toilet block by the public was vacated.

Before us the petitioners have given up their challenge to the construction of the new toilet block or relief for demolition of the old toilet block. Their grievance is that in the judgment High Court made certain observations which will strike death-knell for other writ petitions pending in the High Court seeking reliefs under the Coastal Regulation Zone (CRZ) Notification dated February 19, 1991 and other provisions of the Environment (Protection) Act. Once it is conceded that the petitioners are not challenging the construction of the new toilet block or the existence of the old toilet block it was not necessary for us to deal with this matter as all the observations made by the High Court would be with reference to the issue of the construction of new and existence of the old toilet blocks near the Gateway of India. However, we may note that the petitioners have objected to the following observations made in the impugned judgment :-

1. Necessarily it would mean that once an area is covered under CRZ II, it would not be covered by CRZ I.

2. So far as the question of applicability of CRZ II, admittedly the area near Gateway of India is fully developed upto shore line. It is within the Municipal limits of Greater Mumbai. It is already completely built up and it has been provided with drainage and approach roads and other infrastructural facilities. Hence, the entire city of Mumbai would fall within the ambit of CRZ II.

3. In view of clause (1) of CRZ II it is clear that building cannot be permitted to the seaward side of the existing road or proposed in the approved Coastal Zone Management Plan. Considering the above, it cannot be said that the construction of toilet block on the existing road is in violation of CRZ II. It is not beyond the road on the sea-ward side.

According to petitioners the effect of these observations would be (1) that the entire city of Mumbai fall within the ambit of CRZ II; (2) that once an area is covered under CRZ II, it could not fall within the ambit of CRZ I or CRZ III; and (3) that for construction to be not in violation of CRZ II, it must fall beyond the existing road on the seaward side, as against being on the road which is the condition prescribed in the CRZ Notification, 1991.

We have examined the record of the case. We do not think it is anybody's case that whole of the Mumbai would fall within the ambit of CRZ II. Observations of the High Court that entire city of Mumbai would fall within the ambit of CRZ II do not appear to be quite warranted.

Central Government in the Ministry of Environment and Forests issued Notification No. S.O. 114(E) dated February 19, 1991 under the provisions of Section 3(1) and Section

3(2)(v) of the Environment (Protection) Act and Rules made thereunder declaring coastal stretches as Coastal Regulation Zone (CRZ) and regulating the activities in the CRZ. A corrigendum bearing No. S.O. 190(E) dated March 18, 1991 was issued in partial modification of the aforesaid notification dated February 20, 1991. There has been amendment to these regulations by Notification No. S.O. 494 (E) dated July 9, 1997. Central Government also addressed a communication dated September 27, 1996 to the Chief Secretary, Government of Maharashtra, Mumbai on the subject of Coastal Zone Management Plan (CZMP) of Maharashtra conveying its approval subject to certain conditions and modifications mentioned in the said letter. It is not necessary for us to refer to the notification dated July 9, 1997 and the letter of approval to the CZMP dated September 27, 1996 as these developments have occurred after the impugned judgment and the effect thereof would be considered in an appropriate case.

Central Government before us has submitted that as per approval dated September 27, 1996 construction of building shall be permitted only to the landward side of the existing road. Central Government does not accept the view that the entire city of Bombay falls within the ambit of CRZ II. It is stated that the impugned CZMP of Maharashtra CRZ areas of Mumbai city have been categorized as CRZ I, CRZ II and CRZ III as per definition given in the notification dated February 20, 1991. It is further stated that "the areas that are relatively undisturbed and those which do not belong to either category I or II will qualify for CRZ- III category. These areas will include Coastal Zone in the rural areas (developed and undeveloped) and also areas within municipal limits or in other legally designated urban areas which are not substantially built up. From this provision, it is clear that CRZ- III areas can exist even within the municipal limits or urban areas." Central Government has also submitted that since the revised CZMP of Maharashtra has not yet been received from the Government of Maharashtra, the Ministry of Environment and Forest is not aware whether the area under reference (area around the Gateway of India) is categorized as CRZ-I or CRZ-II. In case the area is categorized as CRZ-I, no new construction is permissible in the CRZ area only to the extent upto which the area has been categorized as CRZ-I. In case the area is categorized as CRZ-II construction of buildings are not permitted on the seaward side of the existing road (or road proposed in the approved CZMP of the area) or on the seaward side of the existing authorized structures.

Stress of the Municipal Corporation of Greater Bombay has been to the validity of the construction of the new toilet block. That is something which is not now being challenged. As to the observations in the impugned judgment that "the entire city of Bombay would fall within the ambit of Coastal Regulation Zone II", it was submitted that the High Court was not concerned with the other areas except Fort area where the structure of Gateway of India is situated and whole of the area is built up within roads and all infrastructural facilities to the structure. In this view of the matter it was submitted that it was not necessary in this case to consider whether the structure or any other place falls within the CRZ I or CRZ II. It was then submitted that State Government had clarified that it would be sending the revised guidelines for CRZ and it was most unlikely that the structure of Gateway of India would

be falling with the CRZ I and the area around it would fall in CRZ II and that the said revised proposal was likely to be issued by the State Government "very soon".

Having said so we do not think it is necessary for us to consider the matter any further and would leave the consideration of notification dated July 9, 1997 amending the earlier notification dated February 20, 1991 and also the communication dated September 27, 1996 addressed by the Central Government to the State of Maharashtra in an appropriate case.

With these observations these petitions are disposed of.

JUDIS