

CASE NO.:
Appeal (civil) 6433 of 2005

PETITIONER:
Mass Holdings Pvt. Ltd.

RESPONDENT:
Municipal Corpn. of Greater Mumbai & Anr.

DATE OF JUDGMENT: 21/10/2005

BENCH:
Ruma Pal & Dr. AR. Lakshmanan

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No. 19929 of 2005)
WITH

C.A. No. 6434 of 2005
@SLP(C) No.19931/2005 &
C.A. No 6435 of 2005
@SLP (C) No.19933 of 2005

RUMA PAL, J.

Leave granted.

The appellant had filed a writ petition before the Bombay High Court challenging a notice dated 26th May, 2004 issued by the respondents, calling upon the appellant to remove its hoarding as it was erected in a Heritage Precinct. The impugned notice had been issued pursuant to an order of the High Court dated 5th May, 2004 confirming a report of the Maharashtra Heritage Conservation Committee (set up by the State Government under the Heritage Regulations, 1995 and referred to hereafter as the 'MHCC') filed in Writ Petition No. 1132 of 2002. That writ petition had been filed by way of public interest litigation by the added respondent herein. The writ petition had inter alia sought for an order from the High Court directing the removal of hoardings. The High Court had referred the matter to an Expert Committee set up by the High Court. The Expert Committee submitted two lists of hoardings which, according to the Committee, violated the Heritage Regulations for Greater Bombay, 1995. On 19th April, 2003, the High Court granted liberty to the owners of the hoardings to file representations before the MHCC raising any objections that they might have to the removal of the hoardings. The MHCC heard the objections of the hoarding owners and others concerned with the hoardings, and ultimately submitted a report to the High Court. The MHCC was of the opinion that various hoardings including the appellant's hoardings, violated the guidelines formulated relating to heritage buildings/structures and in heritage precincts. The High Court directed the implementation of the report of the MHCC by the respondents on 5th May, 2004. Consequently the impugned notice was issued on 26th May, 2004.

In response to the notice the appellant filed a representation before the MHCC contending that the Mahalaxmi Precinct was not included in the heritage list. The appellant did not wait for the outcome of the representation, but filed a writ petition before the High Court impugning the notice and obtained an interim order as we have already noted. In the meanwhile, the MHCC rejected the representation of the

appellant and also filed an affidavit in the pending writ petition in which it reiterated inter alia that the appellant's hoardings should be removed. The High Court found that the reasoning of the MHCC was neither perverse nor illegal. Although initially the High Court had granted an interim order restraining the respondents from taking any steps to demolish the appellant's hoarding, ultimately by an order dated 21st July, 2005, the High Court dismissed the writ petition. The interim order was continued till 15th October, 2005, in order to enable the appellant to test the correctness of the order of the High Court before this Court.

The special leave petition filed by the appellant was entertained by us on 7th October, 2005 when we issued notice and also stayed the demolition of the hoardings till 18th October, 2005.

On 18th October, 2005, the matter was heard extensively. The appellant contended that the hoarding was situated within the Mahalaxmi Precinct, which was not a Heritage Precinct. Our attention was drawn to the various entries in the Schedule to the Resolution dated 24th April, 1995 of the Urban Development Department from which, according to the appellant, it was amply clear that the Mahalaxmi Precinct was listed as a "location" and not as a Heritage Precinct. It was also submitted that the MHCC had filed an affidavit before the High Court incorrectly construing the schedule. It was submitted that the interpretation put by MHCC, which was accepted by the High Court, in fact amounted to an amendment of the schedule for which there was a specific procedure and the procedure could not be circumvented by a process of interpretation. It was stated that there were other hoardings in the precinct, which had not been proceeded against by the respondents and in fact in one of the Special Leave Petitions (SLP \005 CC No.4817/2004); (M/s. Mittal Brothers and Anr. Vs. State of Maharashtra) this Court had issued an interim order staying the operation of the judgment and order of the High Court in so far as it pertained to that case.

As we have accepted the submissions of the respondents, it is not necessary to note their submissions in support of the High Court's decision. Perhaps we could have merely dismissed the Special Leave Petition. But having regard to the number of matters filed we were of the view that we should give our reasons in support of the dismissal.

The Maharashtra Regional and Town Planning Act, 1966 (referred hereinafter as the 'Act') provides for preparation, submission and sanction of a development plan. Section 22 of the Act which provides for the contents of the plan states that the development plan shall provide for specified matters including "preservation of features, structures or places of historical, natural, architectural and scientific interest and educational value and all heritage buildings and heritage precincts".

In exercise of powers under Section 31(1) of the Act, the State Government by Resolution dated 21st April, 1995 sanctioned Development Control Regulation No.67 along with appendix VII-A as specified in the schedule appended to the resolution and fixed 1st June, 1995 as the date on which the Regulation 67 would come into force.

Regulation 67 broadly deals with the Conservation of listed buildings, areas, structures and precincts of historical and/ or aesthetical and /or architectural and/or cultural value (heritage buildings and heritage precincts). Regulation 67 (2) inter alia forbids any addition or alteration of buildings which were either listed as heritage building or as listed heritage precincts except with the prior written permission of the Commissioner. Sub-regulation (2) of Regulation 67 further

provides that " the Commissioner shall act on the advice of/in a consultation with the Heritage Conservation Committee to be appointed by the Government" provided that "in exceptional cases for reasons to be recorded in writing the Commissioner may overrule the recommendations of the Heritage Conservation Committee".

The list of buildings and precincts to which the Regulation was to apply are classified into three grades namely; Grade-I, II or III. Heritage Grade I buildings/ precincts are those which are of National Heritage Importance and are the prime land marks of the city of Mumbai. No intervention either external or internal except absolutely essential and minimal changes can be affected in respect of such building/or precincts. Grade-II heritage buildings/ precincts are of lower historical value or aesthetical merit than Grade-I building/ precincts. As far as the Grade-II buildings are concerned, internal changes were generally be permitted but external changes would be subjected to scrutiny. Grade-III precincts however are of lower historical, aesthetical or sociological interest. External and internal changes could be permitted in accordance with the guidelines.

By a second Resolution dated 24th April, 1995 the State Government sanctioned a list of buildings and precincts of historical, aesthetical, architectural or cultural value as per the scheduled annexed to that resolution. The schedule contains in all 633 items as Heritage buildings or precincts with their "location" described in the next column. Many of the items are overlapping. For example item 633 pertains to Fort Precinct which includes 14 sub precincts. Within those precincts there are several buildings which have been separately listed including the Bombay High Court at item 77. Again item 107 mentions "all buildings at Dadabhai Naoroji Road with a special focus on Fort House" This is followed by items 108 to 127 each of which relate to building/structure on the Dada Bhai Naoroji Road. There is apparently no consistency in the way that the list has been prepared. Not only is there overlapping but there are, at times, inaccuracies. For example against item 442 under the heading, 'location' in respect of several buildings within the Mahalaxmi Precinct, the word appearing is "deleted". If one were to read the list as it is, one would have to come to the absurd conclusion that the location of the several buildings mentioned in 442 was "deleted". Therefore a strict or literal construction of the list would be misplaced.

It is true as far as Mahalaxmi Precinct is concerned, although there is a separate map indicating the precinct along with all other precincts, it does not appear under the column "Nature of Monuments Building, Precincts etc." but in the column headed "Location", against serial Nos. 441 and 442. But locations have generally been indicated in the list with reference to roads. A precinct cannot be a "location" since it is really an area. In such circumstances it is reasonable to ascertain the intention of the State Government from the map annexed to the list. The fact that no map of any other location has been given coupled with the fact that only maps of heritage precincts have been given in our opinion would certainly indicate that Mahalaxmi precinct is indeed a listed heritage precinct against serial No.442 as mentioned in the map.

The list also refers to five precincts, namely Banganga Precincts mentioned against Sl. No. 384, Opera House Precincts, Sl. No.401, Gamdevi Precinct, Sl. No.432, Mahalaxmi Precinct, Sl. No.442, Khotachiwadi Precinct, Sl. No.508, Matharpakhadi Precinct, Sl. No.522 and Bandra Precinct, Sl. No. 612. There is no other precinct which is mentioned as a location.

The MHCC has taken into consideration the nature of the

list, particularly the maps annexed thereto, to come to the conclusion that the mentioning of Mahalaxmi Precinct under the heading of "location" was clearly not the intention of the State Government, but the intention was to treat the precinct along with all other precincts of which maps are given as heritage precincts. The High Court endorsed this opinion. We see no reason to take a different view. Additionally the High Court has noted that the MHCC had said that ever since June, 1995 when the Regulation 67 came into force, all Development proposals relating to buildings and properties situated in the Mahalaxmi Precincts had been submitted to it for clearance. This again indicates that Mahalaxmi Precinct is a Grade-III Heritage site. As far as the case of M/s. Mittle Brothers (relied upon by the appellants), is concerned, it appears from the order issued by us in that matter on 4.6.2004, that this Court had stayed the operation of the order of the High Court to the extent that it had directed hoardings which are contained in Precincts proposed to be added to the list of heritage buildings/ structures to be demolished. In the present case there is no question of a proposed inclusion of buildings/precincts in the heritage list. There is also no question of amendment of the list appended to the Resolution dated 24th April, 1995. The intention of the State Government as has been culled out by the MHCC and affirmed by the Bombay High Court and as found by us is that the list as it exists includes Mahalaxmi Precinct as a heritage precinct.

In the circumstances aforesaid, the appeals are dismissed and the interim order is vacated. However the appellant is given the liberty to demolish the hoardings itself within a period of 10 days from today. If it fails to do so, it will be open to the respondents to take steps pursuant to the impugned notice. No order as to costs.