

Pratibha Co-Operative Housing Society ... vs State Of Maharashtra And Ors on 9 May, 1991

Equivalent citations: 1991 AIR 1453, 1991 SCR (2) 745, AIR 1991 SUPREME COURT 1453, 1991 (3) SCC 341, 1991 AIR SCW 1354, (1991) 2 SCR 745 (SC), (1991) 2 JT 543 (SC), 1991 (2) UPLBEC 972, 1991 (2) JT 543, 1991 (2) UJ (SC) 196, 1991 (2) SCR 745, (1991) 2 LANDLR 382, (1991) 2 MAHLR 646, (1991) 2 RRR 108, (1991) 2 UPLBEC 972, (1992) 1 BOM CR 453

Author: N.M. Kasliwal

Bench: N.M. Kasliwal, M.M. Punchhi

PETITIONER:

PRATIBHA CO-OPERATIVE HOUSING SOCIETY LTD.AND ANR.

Vs.

RESPONDENT:

STATE OF MAHARASHTRA AND ORS.

DATE OF JUDGMENT09/05/1991

BENCH:

KASLIWAL, N.M. (J)

BENCH:

KASLIWAL, N.M. (J)

PUNCHHI, M.M.

CITATION:

1991 AIR 1453

1991 SCR (2) 745

1991 SCC (3) 341

JT 1991 (2) 543

1991 SCALE (1)920

ACT:

Bombay Municipal Corporation Act -Housing Society-
Violation of building laws-Rule 51 violation-Demolition
ordered-Whether valid.

HEADNOTE:

The appellant Co-operative Housing Society Ltd. made some unauthorised constructions in a 36 storeyed building. The Bombay Municipal Corporation issued a show cause notice calling upon the society to show cause as to why the upper eight floors of the building should not be demolished so as

to limit the development to the permissible Floor Space Index (F.S.I.) since the additional Floor Space Index to the extent of 2773 sq. mts. was gained by the appellant. The appellants submitted a reply to the show-cause notice. The Administrator of the Municipal Corporation made an order on 21st September, 1984 requiring the appellant to demolish 24,000 sq. ft. on the eight upper floors of the building on the basis of 3000 sq. ft. on each floor. The Administrator as well as the State Government dismissed the representation and appeal by the appellant. So the appellant filed a writ petition in the High Court which also dismissed with the observation that the appellant be given a choice to reduce the construction upto permissible limit by any alternative proposal within the four corners of the rules and regulations within one month from 28th October 1985 the Municipality may consider.

The appellant made application to the Municipal Corporation giving several alternative proposals on 21st November 1985. But it also preferred a special leave petition before this court against the High Court Judgment. The special leave petition was dismissed on January 17, 1986. The appellants alleged that they submitted another proposal to the Municipal Corporation on 17th February, 1986 and a meeting for hearing alternative proposals was fixed up by the Municipal commissioner and put forward its case in support of the new proposals and the Municipal Commissioner said he would consider the proposals and take decision. On 27th December 1988 the appellant wrote a letter to the Municipal Commissioner to consider the alternative proposal i.e. of

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vertical demolition of the building instead of demolishing the eight upper floors. In January, 1989 the officers of the corporation agreed that demolition can be made vertically so as to bring the entire construction within the permissible Floor Space Index where as the work of demolition of upper eight floors of the building were entrusted to a company by the Municipal Commissioner. So the appellant again filed a writ in the High Court. It was dismissed by the Single Judge as well as by the Division Bench dated 5th March, 1990.

The appellants came by Special Leave Petition in this Court; The main grievance of the appellant being that vertical demolition proposal was not considered. In spite of orders of this Court in this regard to the Municipal Corporation no agreeable solution could fructify. The proposal was examined by the Municipal Commissioner but rejected on 13th November, 1990 and submitted the detailed report to this Court.

Dismissing the petition the Court

HELD: The appellant had made illegal constructions in violation of Floor Space Index to the extent of more than 24000 sq. ft. The decision taken by the Municipal

Commissioner does not suffer from any want of jurisdiction nor is violative of any law or rules. It is well settled that the High Court under Article 226 of the Constitution is not an appellate Court on the administrative decision taken by the authorities. Since the tendency of raising unlawful constructions and unauthorised encroachments is increasing in the entire country and such activities are required to be dealt with by firm hands. Such unlawful constructions are against public interest and hazardous to the safety of occupiers and residents of the multistoreyed buildings. [749F, 750B, E-F]

This case should be a pointer to all the builders that making of unauthorised construction never pays and is against the interest of the society at large. The rules, regulations and by laws are made by the corporations or development authorities taking in view the larger public interest of the society and it is the bounden duty of the citizens of obey and follow such rules which are made for their own benefits. [750H-715B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 5383 of 1990.

From the Judgment and Order dated 9.3.1990 of the Bombay High Court in Appeal No. 231 of 1990 in W.P. No. 3016 of 1989.

K.K. Venugopal, G.L. Sanghi, Sudhir Shah and P.N. Misra for the Petitioners.

K.K. Singhavi, N.B. Shetye, D.N. Mishra and A.S. Bhasme for the Respondents.

The Judgment of the Court was delivered by KASLIWAL, J. This petition under Article 136 the Constitution of India is directed against the order of Bombay High Court dated 9th March, 1990.

Facts necessary and shorn of details are given as under. Pratibha Cooperative Housing Society Ltd. (hereinafter referred to as 'the Housing Society') made some unauthorised constructions in a 36 storeyed building in a posh and important locality of the city of Bombay. The Bombay Municipal Corporation issued a showcause notice dated 7th August, 1984 calling upon the Housing Society to showcause within 7 days as to why the upper right floors of the building should not be demolished so as to limit the development to the permissible Floor Space Index (F.S.I.). In the notice it was gained by the Housing Society and that the construction work had already reached 36 floors and that on the basis of the actual area of the building, the upper eight floors were beyond the permissible F.S.I. limit and as such were required to be removed. The Housing Society submitted a reply to the showcause notice by their letter 13th August, 1984. The Administrator of the Bombay Municipal Corporation made an order on 21st September, 1984 requiring the Housing Society to demolish 24,000 sq. ft. on the eight upper floors of the building on the basis of 3000 Sq. ft. on each

floor. The Housing Society made a representation but the same was dismissed by the Administrator by order dated 31st October, 1984. An appeal submitted by the Housing Society was also dismissed by the State Government on 7th October, 1985. The Housing Society then filed a writ petition No. 4500 of 1985 in the High Court. A Division Bench of the High Court dismissed the writ petition on 28th October, 1985. However, the High Court while dismissing the writ petition also observed as under:

"It would, however, be fair and just in the circumstances of the case to give a choice to the society to reduce the construction up to permissible limit or whatever other method they can think of. It is of course for the society to come forward with a proposal in that behalf. We therefore direct that in case the society comes with any such alternative proposal within the four corners of the rules and regulations within one month from today the Municipality may consider."

The case of the Housing Society is that in pursuance to the said order it submitted application to the Municipal Corporation giving several alternative proposals on 21st November, 1985. It may be noted at this stage that the Housing Society had preferred a special leave petition No. 17351 of 1985 before this Court against the judgment of the High Court dated 28th October, 1985 and the said special leave petition was dismissed by this Court on 17th January, 1986. Further allegation of the Housing Society was that it submitted another proposal to the Municipal Corporation on 17th February, 1986 and thereafter wrote to the Municipal Council on 14th August, 1986 to consider their alternative proposals. A similar letter was also written to the Chief Minister of Maharashtra. On 29th August, 1986 the Municipal Commissioner fixed up a meeting for hearing the alternative proposals of the Housing Society. It has been alleged that in the said meeting the Housing Society had put forward its case in support of the new proposals and the Municipal commissioner had thereafter informed the Housing Society that he would consider the said proposals and take decision. However, no decision was taken till the filing of the present special leave petition before this Court. It has been further alleged that on 27th December, 1988 the Housing Society wrote a letter to the Municipal Commissioner to consider the alternative proposals mainly of vertical demolition of the building instead of demolishing the eight upper floors. It had been alleged that a meeting took place between the architects of the Housing Society as well as the officers of the Municipal Corporation in January, 1989 wherein the officers of the Corporation agreed that instead of demolishing eight upper floors, demolition can be made vertically so as to bring the entire construction within the permissible F.S.I. It has been further alleged that immediately thereafter the Housing Society was informed that henceforth it should contact the Municipal Commissioner directly and not any officers of the Corporation. It has been further alleged that the Corporation without considering the proposals of the Housing Society entrusted the work of demolition of the upper eight floors of the building to a company. In these circumstances the Housing Society filed writ petition No. 3016 of 1989 in the High Court. Learned Single Judge dismissed the writ petition by order dated 19th December, 1989 and the appeal preferred against the said order was dismissed by the Division Bench of the High Court by order dated 9th March, 1990.

In view of the fact that the main grievance of the Housing Society was that its alternative proposal of demolishing the building vertically instead of eight upper floors was not considered on merits by the

Corporation, a serious effort was made by this Court to get the feasibility of such proposal examined by the Corporation. Orders in this regard were passed by this Court on several occasions but ultimately no agreeable solution could fructify. The proposal was got examined at the highest level by the Municipal Corporation and ultimately the Commissioner rejected the proposal on 13th November, 1990 and submitted a detailed report in writing for the perusal of this Court. In the above report it has been stated that in pursuance to the order of this Court dated 22nd October, 1990, the proposals submitted by the Housing Society on 27th October, 1990 and 29th October, 1990 in supersession of all alternative proposals, to demolish vertically one bedroom and servant quarters on all the floors to bring the building in tune with the F.S.I. was considered but on the grounds stated in the report the proposal submitted by the Housing Society cannot be approved.

In the circumstances mentioned above on the request of learned counsel for both the parties to decide the case on merits, we heard the arguments in detail on 23.4.1991. Thereafter, in order to clarify some points we directed the Chief Engineer cum Architect and the Municipal Commissioner to remain present on the next date namely, 1.5.1991 and to keep the record of the case also ready for our perusal.

We have heard learned counsel for the parties at great length and have thoroughly perused the record. It may be noted that the Housing Society had made illegal constructions in violation of F.S.I. to the extent of more than 24,000 sq. ft. and as such an order for demolition of eight floors was passed by the Administrator, Municipal Council as back as 21st September, 1984. The writ petition filed against the said order was dismissed by the High Court on 28th October, 1985 and special leave petition against the said order of the High Court was also dismissed by this Court. The High Court in its order dated 28th October, 1985 had granted an indulgence to the Housing Society for submitting an alternative proposal within the four corners of the rules and regulations within one month and the municipality to consider the same. The proposal was submitted on 21st November, 1985 but in the said proposal there was no mention of any vertical demolition of the building. The proposal with regard to the demolition vertically of one bedroom and servant quarters on all the floors was submitted for the first time on 27th December, 1988. During the pendency of the special leave petition before this Court, this proposal was got examined by the Municipal corporation. The Municipal commissioner submitted a report on 13th November, 1990 giving detailed reasons for rejecting such proposal. It is well settled that the High Court under Article 226 of the Constitution is not an Appellate Court on the administrative decisions taken by the authorities. It cannot be said that the decision taken by the Municipal Commissioner suffers from any want of jurisdiction or is violative of any law or rules. The proposal submitted by the Housing Society was got examined by the architects and engineers and thereafter the order was passed by the Municipal Commissioner. It cannot be said that the action of the Municipal Corporation is tainted with mala fides. It was submitted by the learned counsel for the Corporation that the Corporation has entrusted the matter for investigation by the CBI and suitable action is being processed against the guilty officers of the Corporation with whose connivance these illegal constructions were made by the Housing Society.

It is an admitted position that six floors have been completely demolished and a part of seventh floor has also been demolished. It was pointed out by Mr. K.K. Sighvi, learned counsel for the Corporation that the tendency of raising unlawful constructions by the builders in violation of the

rules and regulations of the Corporation was rampant in the city of Bombay and the Municipal Corporation with its limited sources was finding it difficult to curb such activities. We are also of the view that the tendency of raising unlawful constructions and unauthorised encroachments is increasing in the entire country and such activities are required to be dealt with by firm hands. Such unlawful constructions are against public interest and hazardous to the safety of occupiers and residents of multistoreyed buildings. The violation of F.S.I. in the present case was not a minor one but was to an extent of more than 24,000 sq. ft. Such unlawful construction was made by the Housing Society in clear and flagrant violation and disregard of F.S.I. and the order for demolition of eight floors had attained finality right upto this Court. The order for demolition of eight floors has been substantially carried out and we find no justification to interfere in the order passed by the High Court as well as in the order passed by the Municipal Commissioner dated 13th November, 1990.

In the result we find no force in the petition and the same is dismissed with no order as to costs. Before parting with the case we would like to observe that this case should be a pointer to all the builders that making of unauthorised constructions never pays and is against the interest of the society at large. The rules, regulations and bylaws and made by the Corporations or development authorities taking in view the larger public interest of the society and it is the bounden duty of the Citizens to obey and follow such rules which are made for their own benefits.

S.B.

Petition dismissed.