

Bombay Dyeing & Manufacturing Co. Ltd vs Bombay Environmental Action Group & Ors on 11 May, 2005

Author: S.B. Sinha

Bench: N. Santosh Hegde, S.B. Sinha

CASE NO.:

Appeal (civil) 3271 of 2005

PETITIONER:

Bombay Dyeing & Manufacturing Co. Ltd.

RESPONDENT:

Bombay Environmental Action Group & Ors.

DATE OF JUDGMENT: 11/05/2005

BENCH:

N. Santosh Hegde & S.B. Sinha

JUDGMENT:

J U D G M E N T [@ S L P (C) N o . 7 4 0 5 O F 2 0 0 5] W I T H I . A . N O . 2 I N C . A . @ S L P (C I V I L) N O . 7 4 0 5 O F 2 0 0 5 W I T H C I V I L A P P E A L N O . O F 2 0 0 5 [@ S L P (C) N o s . 7 5 4 9 - 7 5 5 0 o f 2 0 0 5] W I T H I . A . N O . 7 - 1 1 I N C . A . @ S L P (C I V I L) N O S . 7 5 4 9 - 7 5 5 0 O F 2 0 0 5 W I T H C I V I L A P P E A L N O . O F 2 0 0 5 [@ S L P (C) N O . 1 0 5 1 1 o f 2 0 0 5] W I T H I . A . N O . 3 I N C . A . @ S L P (C I V I L) N O . 1 0 5 1 1 O F 2 0 0 5 W I T H C I V I L A P P E A L N O . O F 2 0 0 5 [@ S L P (C) N O . 7 4 5 3 o f 2 0 0 5] W I T H I . A . N O . 2 I N C . A . @ S L P (C I V I L) 7 4 5 3 O F 2 0 0 5 W I T H C I V I L A P P E A L N O . O F 2 0 0 5 [@ S L P (C) N O . 7 4 5 1 o f 2 0 0 5] W I T H I . A . N O S . 2 - 3 I N C . A . @ S L P (C I V I L) N O . 7 4 5 1 O F 2 0 0 5 W I T H C I V I L A P P E A L N O . O F 2 0 0 5 [@ S L P (C) N O . 8 3 6 2 o f 2 0 0 5] W I T H I . A . N O . 2 I N C . A . @ S L P (C I V I L) N O . 8 3 6 2 O F 2 0 0 5 A N D C I V I L A P P E A L N O . O F 2 0 0 5 [@ S L P (C) N O . 8 3 7 8 o f 2 0 0 5] W I T H I . A . N O . 2 I N C . A . @ S L P (C I V I L) N O . 8 3 7 8 O F 2 0 0 5 S . B . S I N H A , J :

Leave granted.

In the early eighties the workmen of the cotton mills situated in the town of Bombay went on a strike resulting in closure of 58 textile mills which together occupied lands measuring about 600 acres. Out of the said 58 mills, 25 belonged to the National Textile Corporation and 33 to private parties.

In terms of the Maharashtra Regional & Town Planning Act, 1966, the Development Control Rules (DCR), 1967 were framed. The State Government took a policy decision to amend the DCR wherefor suggestions/ opinion from the public were invited. In the year 1991, Development Control Regulations, 1991 were framed; Regulation 58 whereof permitted modernization of mills and

development of surplus mill lands in the manner specified therein. It also provided for development of mill lands as a part of BIFR approved rehabilitation schemes and also for modernization and shifting thereof.

The said Regulation 58 sought to deal with the lands appertaining to cotton textile mill pursuant whereto each of the mill owners could give one of the options out of the following:

- (i) The mill owners could continue to operate their mills even though it was running into losses. This was the status-quo option which entailed no land being surrendered to MHADA, public greens;
- (ii) The second option entailed retaining the outer shell of the mill structures and building commercial structures within the mill structure;
- (iii) The third option entailed two steps. The first step was raising of construction within the old structure and the second step was to construct on the part of open spaces;
- (iv) The fourth option ensured demolition of the entire old structures and sharing the entire mill lands in approximately three equal proportions.

The first part would remain with the mill owner which he would be entailed to redevelop. The second share would go to MHADA and the third share would go to public greens.

Pursuant to or in furtherance of the said regulation, only two mills exercised the second option and three mills the third one. Nobody opted for the fourth as in terms thereof the mill owners were required to surrender a major portion of their land. As allegedly, the said regulation did not work satisfactorily as no significant amount of land either for public green or for MHADA came to be surrendered, it was not implemented.

It is stated that some mills endeavoured to develop the lands in accordance with the said regulation but the same did not achieve the purpose for which the Regulation 58 was brought into force. In the aforementioned situation, as would be noticed supra, Regulation 58 was amended in 2001.

The Respondents filed a writ petition in the Bombay High Court questioning the validity of the said regulation. Some interim orders have been passed therein which are in question in these appeals.

The Appellants contend :

- (i) As the scheme containing 1991 regulations was not found to be workable, committees were appointed and in furtherance of their recommendations a new Regulation 58 was introduced in the year 2001. The new Regulation 58 envisaged a coherent development of the various mills and their lands in Mumbai and also ensured that the proceeds of such development are utilized in accordance with either

the schemes promulgated by BIFR and/ or for the satisfaction of the dues of the workers and/ or for the satisfaction of the large outstanding public monies by way of loans from financial institutions and banks under the supervision of a Monitoring Committee.

Regulation 58 of 2001 while providing for a coherent development also took care of the provision for open spaces, public amenities and public housing. The entire development is to be overseen by a Monitoring Committee which over see an escrow account to ensure financial accountability, their payment to workers/ financial institution etc. and is headed by a retired High Court Judge appointed under the said Regulation 58 of 2001. Pursuant to or in furtherance of the new regulation, the mill owners allegedly borrowed huge sums of money, i.e., Rs. 2002 crores from the banks and financial institutions to pay of the dues of the workers and also the dues of the others.

(ii) Bombay Dyeing & Manufacturing Co. Ltd. alone after taking advances from the financial institutions paid Rs. 120 crores to the workers and is committed to pay a further sum of Rs. 50 crores.

(iii) Within a span of four years since coming into force of the 2001 Regulations, third party rights have been created, sanctions have been obtained for modernization of scheme and the parties have altered their position to a large extent.

The said regulation of 2001 was clarified in the year 2003. With a view to have a re-look at Regulation 58, a nine member committee with Shri Deepak Parekh, Chairman, HDFC as its Chairman was appointed; the terms of reference whereof are:

"(1) To examine the feasibility of an integrated development of mills land.

(2) To study the existing DCR and suggest ways so that enough land is made available for open use/ public housing without jeopardizing workers/ financial institutions interests."

However admittedly no recommendation has been made by the said committee nor its term has been extended.

The first Respondent is a public charitable trust registered both under the Bombay Public Trust Act, 1950 as also a society registered under the Societies Registration Act. Its aims and objects inter alia are to look after environment in all aspects and it had been carrying activities therein. The Respondent filed a writ petition on or about 18th February, 2005 in the nature of a Public Interest Litigation in the High Court of Judicature at Bombay praying inter alia for the following reliefs:

"(a) For an appropriate writ, order or direction striking down the impugned order dated 20th March, 2001 (Exhibit "C", hereto) and consequent amendment to DC Regulation 58, in particular, Clauses A-6 and C-1 (5) of Schedule 1 of the impugned order dated 20th March, 2001 as ultra vires the MRTP Act, illegal, unconstitutional,

void ab initio and non est;

(b) For a writ of mandamus, or a writ in the nature of mandamus or any other appropriate writ, order or direction, ordering and directing the 1st and 2nd Respondents (and their servants, agents or officers):

(i) to withdraw/ cancel the impugned order dated 20th March, 2001 and the consequent amendment to DCR 58;

(ii) to take such action as is necessary in law to amend DCR 58 to ensure that the total amount of space available for redevelopment in respect of which the percentage wise allocations are to be determined, is the open land and the land available after demolition of existing structures;

(iii) to forbear and desist from granting any permission, in accordance with amended DCR 58 (including to Respondent Nos. 3 and 4) for the redevelopment of the mill lands;

(iv) restraining them from in any way acting in furtherance of the report submitted by NTC and prepared by "Team One".

(c) For a writ of mandamus or a writ in the nature of a writ of mandamus directing Respondent Nos. 1 and 2 (and their servants, agents or officers) to undertake preparation of plan for comprehensive development of appropriately delineated Textile Mill District so as to provide for the comprehensive development of these mill lands in an integrated manner in furtherance of the recommendations made by the Charles Correa Expert Committee Report submitted in August, 1996;

(d) That pending the hearing and final disposal of this petition, Respondent Nos. 1 and 2 should be restrained by an appropriate writ, order direction or injunction from granting any permission or taking any action pursuant to permission already granted for the redevelopment of mill lands (including to Respondent Nos. 3 and 4) in pursuant of the provisions of amended DCR 58;

(e) That pending the hearing and final disposal should be ordered and directed by the Hon'ble Court to produce on affidavit all the material documents and information that has been submitted to Respondent Nos. 1 and 2 by Respondent Nos. 3 and 4 as part of their application for permission to develop the said land or any part thereof and any other material and information available to Respondent Nos. 1 and 2 which it has considered / likely to consider in relation to the grant of permission to Respondent Nos. 3 and 4 for the development of the said mill land;

(f) That pending the hearing and final disposal of this petition, Respondent Nos. 1 and 2 should be ordered and directed by this Hon'ble Court to produce on affidavit all the material documents and information that has been submitted to Respondent Nos. 1 and 2 by privately owned mills as part of their applications for permission to develop their respective textile mill lands, and any other material information and documents that Respondents Nos. 1 and 2 considered in relation to the

grant of permission to them for the development of their respective mill lands;

(g) That pending the hearing and final disposal of this petition, Respondent Nos. 1 and 2 should be ordered and directed to appoint a Special Planning Authority or any other supervisory body/ committee to supervise the comprehensive / integrated development of mill lands, including private mill lands (that fall within the purview of DCR 58), in furtherance of the recommendations of the Charles Correa Expert Committee Report submitted in August, 1996;

(h) For ad-interim reliefs in terms of prayer clauses (d) to (g); and

(i) For such further and other reliefs and orders as this Hon'ble Court deem fit in the nature and circumstances of this petition."

In the said writ petition, apart from the State of Maharashtra, the Municipal Corporation of Mumbai, the Maharashtra Housing and Area Development Authority, National Textile Corporation Maharashtra North and South Maharashtra were impleaded as Respondents. Before the said High Court, a large number of mill owners and others who allegedly have invested a huge sum on the lands of the Mill owners or otherwise interested in implementation of Regulation 58 of 2001 filed applications for their impleadment as parties therein but the same was opposed by the Respondents. The Applicants, however, were allowed to intervene.

It was, however, stated at the bar that whereas 6th April, 2005 was fixed for filing responses by the interveners, but after hearing the matter for three days, viz., 29th to 31st March, 2005, the impugned orders were passed.

Before the High Court, the National Textile Corporation inter alia contended that it had been carrying on its activities in terms of a scheme framed by the BIFR and which has been approved by this Court by an order dated 27.9.2002 in the following terms:

"We have been informed that BIFR has already formulated eight schemes which stand approved by all concerned and agencies. But the Schemes as sanctioned by BIFR be implemented. The special leave petition and the transfer petitions stand disposed of accordingly."

The National Textile Corporation contends that out of 25 mills 17/18 Mills have closed down. Approximately 14,800 employees have been relieved. Payment of Rs. 643.94 crores have been made to the employees.

It has further been contended that several financial institutions and others have acted pursuant to or in furtherance of the said scheme. It is stated that negotiations for selling seven textile cotton mills have been finalized and, thus, it was submitted that no stay should be granted.

The High Court passed two interim orders on 1st April, 2005. As regard National Textile Corporation, it was directed:

"On behalf of the N.T.C. the learned Counsel submits that they should be allowed to proceed with the sale of Jupiter Mills. The matter is pending before this Court. However, considering the urgency which Counsel make out any further as N.T.C. has 25 mills the request for confirming the sale can be agreed to, subject to the following conditions:

i) The NTC will file an undertaking in this Court, that on the Court passing an order on interim relief they will comply with the order of the Court including if a situation arises of reserving the land in the other mills for which development is sought in terms of the order that may be passed by the Court. On such undertaking being filed, it is open to the NTC to confirm the sale of Jupiter Mills."

It was further directed:

"ii) Considering that the matter has now been adjourned to 20.4.2005 the Respondent No. 2 Municipal Corporation directed not to approve any further lay outs, issue IOD, or CC without the permission of this Court or till further orders."

It is not in dispute that although no argument was advanced in that behalf, the Division Bench by a separate order directed the State as also the Bombay Municipal Corporation to file a large number of documents under fourteen different heads.

The learned counsel appearing on behalf of the Appellants inter alia would submit:

(i) Keeping in view of the fact that the writ petitioners did not file any objection or suggestions before Regulation 58 was given a concrete shape, it was not entitled to any interim relief.

(ii) Regulation 58 being a subordinate legislation, a public interest litigation should not have been entertained questioning its validity.

(iii) In any event, as within the interregnum of four years, the Appellants as also the others have invested a huge sum of money, the interim order ought not to have been passed as they would affect the interests inter alia of (i) the workers, (ii) the financial institutions, (iii) the mill owners; and (iv) the third party purchasers.

(iv) No interim order in any view of the matter could have been passed without impleading the interested parties and permitting them to file their affidavits.

(v) Several parties have obtained lay out, IOD or commencement certificates for different stages and in that view of the matter if the interim order is allowed to operate, the same would result in great hardship.

The learned Solicitor General appearing on behalf of the State of Maharashtra further submitted that if the State of Maharashtra is asked to carry out the directions of the High Court as regard filing of the documents, they will be put to a great hardship as truck loads of documents will have to be brought before the High Court.

Mr. Parasaran and Mr. Rohtagi, learned senior counsel appearing on behalf of the National Textile Corporation would contend that keeping in view of the fact that in respect of seven mills, negotiations have been entered into, they should be allowed to be sold off and in the event, the writ petition succeeds, the order of the court can be complied with by adjusting vacant land belonging to the other mills.

Mr. Iqbal Chagla, learned senior counsel appearing on behalf of the writ petitioner-Respondents, on the other hand, would contend that in terms of the 1991 Regulations, at least 200 acres out of 600 acres of land situate in the middle of the city would have been made available providing for large space for the inhabitants of the town and further 200 acres of land would have been available to MHADA for construction of residential houses for the weaker sections. Integrated development of town of Bombay, the learned counsel would contend, is imperative having regard to the fact that whereas in other metros, three to four acres of open space is available for one thousand residents, in the town of Mumbai, it is only 0.03 acres per thousand. It was contended that in terms of Section 37 of the Maharashtra Regional & Town Planning Act, 1966, the State of Maharashtra itself imposed a ban in 1996 on constructions on the ground that no final decision had been taken in that behalf and in that view of the matter there is absolutely no reason as to why the impugned order cannot be sustained in as much as the validity of Regulation 58 has been questioned in the writ petition. It was pointed out that the State of Maharashtra itself issued clarification of 2001 Regulations in March, 2003 in terms whereof allotment in favour of MHADA came to an end. It had been pointed out that Bombay Municipal Corporation and MHADA had adopted resolutions asking the State Government to have a relook in the matter and in January, 2005, the State appointed a committee therefor. In any event, the learned counsel would contend that the High Court by reason of the impugned order having not directed stoppage of constructions or any other activity in relation whereunto agreements have been entered into or requisite sanctions have been granted, the impugned orders should not be interfered with.

The learned counsel would urge that the undertaking directed to be given by the National Textile Corporation is commensurate with the suggestion given by Mr. Parasarn before this Court.

This Court at this stage is concerned with an interim order passed by the High Court. The writ petition is still to be heard. Affidavits between the parties are yet to be exchanged. The objection as regard maintainability of the writ petition is also required to be finally determined by the High Court itself. This Court at this stage cannot, thus, enter into all the contentious questions raised in these appeals. But, there cannot be doubt or dispute whatsoever that before an interim order is passed and in particular a public interest litigation, the court must consider the question as regard existence of a prima facie case, balance of convenience as also the question as to whether the writ petitioners shall suffer an irreparable injury, if the injunction sought for is refused. The courts normally do not pass an interlocutory order which would affect a person without giving an

opportunity of hearing to him. Only in extreme cases, an ad interim order can be passed but even therefor, the following parameters as laid down by this Court in Morgan Stanley Mutual Fund etc. vs. Kartick Das etc. [(1994) 4 SCC 225] are required to be complied with:

"As a principle, ex parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of ex parte injunction are

- (a) whether irreparable or serious mischief will ensue to the plaintiff;
- (b) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;
- (c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;
- (d) the court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant ex parte injunction;
- (e) the court would expect a party applying for ex parte injunction to show utmost good faith in making the application.
- (f) even if granted, the ex parte injunction would be for a limited period of time.
- (g) General principles like prima facie case, balance of convenience and irreparable loss would also be considered by the court."

[See also Andhra Bank Vs. Official Liquidator and Anr., 2005 (3) SCALE 178] The courts while passing an order of interim injunction must also consider the parameters of a Public Interest Litigation as laid down by this Court in Dr. B. Singh Vs. Union of India and Others [(2004) 3 SCC 363] and Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others [(2005) 1 SCC 590].

The courts, however, have to strike a balance between two extreme positions, viz., whether the writ petition would itself become infructuous if interim order is refused, on the one hand, and the enormity of losses and hardships which may be suffered by others if an interim order is granted, particularly having regard to the fact that in such an event, the losses sustained by the affected parties thereby may not be possible to be redeemed.

In Deoraj vs. State of Maharashtra and Others [(2004) 4 SCC 697] this Court opined:

"12. Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of the main petition

itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong prima facie case of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of the case totally in favour of the applicant may persuade the court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the court may put the parties on such terms as may be prudent."

In *Raunaq International Ltd. Vs. I.V.R. Construction Ltd. and Others* [(1999) 1 SCC 492], this Court held that in appropriate cases, the petitioners should be put on appropriate terms such as providing an indemnity or an adequate undertaking to make good the loss or damage in the event the PIL filed is dismissed. [See also *Guruvayoor Devaswom Managing Committee and Another Vs. C.K. Rajan and Others*, (2003) 7 SCC 546].

The Courts are also required to consider the decisions of this Court relating to public interest litigation vis-à-vis reason of delay in bringing the same as noticed by this Court in *Chairman & MD BPL Ltd Vs. S.P. Gururaja and Others*, (2003) 8 SCC 567] in the following terms:

"In the facts and circumstances, we do not find that the Board and the State had committed any illegality which could have been a subject-matter of judicial review. The High Court in our opinion committed a manifest error insofar as it failed to take into consideration that the delay in this case had defeated equity. The allotment was made in the year 1995. The writ application was filed after one year. By that time the Company had not only taken possession of the land but also made sufficient investment. Delay of this nature should have been considered by the High Court to be of vital importance."

[See also *Narmada Bachao Andolan Vs. Union of India and Others*, (2000) 10 SCC 664 at 762 and *R & M Trust Vs. Koramangala Residents Vigilance Group and Others*, (2005) 3 SCC 91 at 112-13] So far as transactions relating to seven mills belonging to National Thermal Corporation are concerned, including sale of Jupiter Mills, it is not in dispute that transactions have reached a final stage. The purchasers of Jupiter Mills have already paid 16 crores and a sum of Rs. 376 crores would pass hands if the transaction is completed. If the transactions in respect of the mills are not allowed to be completed, the scheme framed by the BIFR would come to a stand still resulting in accrual of interest payable by the National Textile Corporation to the financial institutions besides other hardships which may be caused to various other persons including the workers.

We, therefore, having regard to the facts and circumstances of this case as also the law operating in the field, are of the opinion that interest of justice would be sub-served if the National Textile Corporation is permitted to complete the transactions in terms of the scheme framed by the BIFR but the same shall be subject to the conditions that in the event, the writ petition ultimately succeeds, the vacant land available from other mills, if necessary, shall be offered by way of adjustment.

In some cases, the State might have sanctioned DCR. Yet in some other cases, IODs might have been obtained. Yet again, in some cases, Commencement Certificates might have been granted. In such cases, the statutory authorities shall process applications or further applications for grant of sanction required for commencement and/ or continuation of structures strictly in accordance with law. It is stated that in some cases such applications may be entertained although the period of lease has expired. We do not think that the statutory authorities shall be so callous so as to grant permission in favour of a person who does not have ownership over the land in question. We furthermore have no doubt that the scheme, rules, regulations and byelaws framed under the provisions of Maharashtra Regional & Town Planning Act, 1966 shall be strictly complied while granting permission. We have furthermore no doubt that the committee appointed in terms of the regulation shall grant its approval only in accordance with the extant regulations. The Appellants and/ or interveners herein, however, before creating any further third party interest or before raising any constructions pursuant to or in furtherance of any fresh lay out, IODs or CCs must put an advertisement in two newspapers having wide circulation in Mumbai; one in English and the other in Marathi Vernacular clearly indicating the same. If any agreement is to be entered into in future or any third party right is to be created, a stipulation shall be made therein that the enforcement thereof shall be subject to any other or further order which may ultimately be passed by the High Court in the pending proceedings.

Any further constructions and/ or creation of any third party rights by the mill owners will be at their own risk wherefor they would not claim any equity whatsoever and furthermore the same shall be subject to the orders of the Court. However, any new application for grant of approval of any lay outs, issue of IODs or commencement certifications may be processed but no construction shall be carried on pursuant thereto or in furtherance thereof.

It appears that there exists some dispute between two rival trade unions. Their interse disputes representing different sections of workers, if any, may be determined by an appropriate forum in an appropriate proceeding.

We are informed that the Division Bench of the Bombay High Court had fixed hearing of the writ petition in the last week of August, 2005. We would request the High Court to consider the desirability of preponing the date so that the writ petition may be heard out and disposed of at an early date and preferably by 31st July, 2005.

The impleaded parties and/ or interveners may file their affidavits before the High Court within three weeks from date.

The State of Maharashtra and the Bombay Municipal Corporation shall place all the relevant documents before the High Court and in the event, it is found at a later stage that they have withheld any document which is relevant, the High Court would be at liberty to draw adverse inference against them or pass such other order or orders as may be found necessary. We have passed this order having regard to the fact that the directions to produce documents have been passed without hearing the parties and without taking into consideration the hardship which may be faced by the State and/ or Bombay Municipal Corporation.

We, by our order dated 18th April, 2005 directed the matter to be placed on 23rd August, 2005 for hearing but keeping in view of the fact that in these appeals we were called upon to deal with an interim order, we are of the opinion that no purpose would be served in keeping the matters pending. We, therefore, dispose of these appeals and the intervention applications on the aforementioned terms.

Having regard to the directions issued, it is not necessary to pass any separate orders on the applications for impleadment and/or intervention..

No order as to costs.