

Supreme Court of India

Municipal Corporation Of City vs Shivshanker Gaurishanker Mehta ... on 22 July, 1997

Equivalent citations: AIR 1999 SC 2874, (2001) GLR 364, JT 1998 (7) SC 469, (1998) 9 SCC 197

Bench: S Majmudar, D Wadhwa

ORDER

1. These appeals arise out of a common judgment rendered by a Division Bench of the High Court of Gujarat pursuant to reference of two constitutional points for decision of the High Court. The reference was made by the City Civil Court Judge in a group of civil suits pending before him. Reference obviously was made under Section 113 read with Order 46 of the CPC. A few facts leading to these appeals taken out by the Ahmedabad Municipal Corporation on grant of special leave deserve to be noted at the outset.

2. The appellant-Corporation functioning under the provisions of the Bombay Municipal Corporation Act, 1949 (hereafter referred to as "the Act") sought to enforce a road line settled under Section 210 of the Act after following the requisite procedure laid down thereunder. It is obvious that as the section provided for issuing public notices calling for objections from those who were likely to be affected by the laying down of these road lines, all such persons got intimation about the said proposal of the Corporation. We are told that Section 210 procedures were over in the year 1962. Thereafter it appears that the Standing Committee of the Corporation approved the proposed road line and sanctioned the same in exercise of its statutory powers. Then was reached the stage for enforcement of the road line and that obviously required acquisition of some portions of the properties situated on both sides of the sanctioned road line for widening the road pursuant thereto. Consequently, notices under Section 212, sub-section (1)(b) of the Act were issued to the owners of the properties who were likely to be affected by the said exercises to be undertaken by the Corporation. Such notices were issued to these owners as early as on 21-4-1964 and thereabout. Thereafter years rolled by and by November 1977, composite notices were issued by the Corporation under Section 212(2) of the Act to those owners whose properties were likely to be adversely affected and would be required to be demolished to the extent they fell within the settled road line. Such notices were also issued to the occupiers of the properties who may be the tenants in actual possession of those properties and who were also likely to be affected by the demolition of the part of the premises occupied by them. These notices resulted in filing of number of suits in the City Civil Court, Ahmedabad challenging these notices for the proposed demolition of the premises to the extent they fell within the road line.

3. Learned City Civil Court Judge who heard these suits in common as common questions were involved took the view that the impugned notices were bad as the tenants of the premises who comprised of the majority of the plaintiffs (though one of the plaintiffs was owner of one of the suit properties), were given no notices under Section 212(1). However, on the language of Section 212(1) of the Act, learned Judge took the view that as the word "owner" was mentioned therein it did not include tenant or any other person in possession having interest in the premises and to that extent prima facie the section would be violative of Article 14 of the Constitution and similar vice would get attached to Section 213 which dealt with the actual demolition of the premises covered by the proposed sanctioned road line and both the sections, therefore, would prima facie appear to be

violative of Article 14. The learned Judge, therefore, framed two points for decision of the High Court and made them the subject-matter of the reference under Section 113 read with Order 46 CPC as noted earlier. These two questions referred for decision of the High Court read as under:

"(i) Are not the provisions of Section 212 of the Bombay Provincial Municipal Corporation Act ultra vires Article 14 of the Constitution of India insofar as the said provisions provide due opportunity of being heard to the owners of buildings whereas it does not provide such opportunity to tenants occupying the said buildings, falling within the regular line of street in this context, are not the owners as also the tenants of such buildings, quite alike and yet differentially treated by the said section, without any intangible differentia?

(ii) Is not Section 213 of the Bombay Provincial Municipal Corporation Act liable to be struck down on the ground that it is violative of the fundamental principles of natural justice, viz., audi alteram partem insofar as before asking the owner/occupant of the land to hand over possession thereof to the Municipal Commissioner, it does not provide an opportunity to such occupant/owner to show cause why the road line earlier prescribed may not be implemented and why the land in his ownership/occupation acquired?"

4. The ultimate order which the learned Judge of the City Civil Court passed on 3-2-1979 is required to be extracted in full. It reads as under:

"(i) The case as above is referred to the High Court of Gujarat for its opinion.

(ii) The notices impugned in the suits, insofar as they are under Section 212 of the Act will be declared illegal, if case (i) is accepted by the High Court and those impugned in the suits, but issued under Section 213 of the Act will be declared illegal, if case (ii) is accepted by the High Court.

(iii) In case, however, the reference is rejected, the suits will stand dismissed.

(iv) In the circumstances of the case there will be no order as to costs."

5. A mere look at this order shows that the decision on the main challenge mounted by the plaintiffs against the impugned notices under Sections 212(1) and 213(2) of the Act was made subject to the result of the references made to the High Court for deciding the aforesaid two issues. It was clearly mentioned in the said order that in case the reference was rejected, the suits were to stand dismissed. Pursuant to the said reference order, a Division Bench of the High Court considered the questions referred and by the impugned common order came to the conclusion for reasons which are strictly speaking not necessary for us to mention, that the references were liable to be rejected. The said decision of the High Court was rendered in the light of a decision of this Court in *Municipal Corporation of the City of Ahmedabad v. State of Gujarat*, which had taken the view that under Section 216 read with Section 389 of the Act, while determining compensation to be paid to the parties affected by the demolition of structures falling within road line the Corporation had to compensate not only the owners but also all other interested persons who were likely to be affected by such demolition. According to the High Court in the light of the aforesaid decision, the referred

questions were not required to be considered further and the references were accordingly rejected. While rejecting the reference, the High Court proceeded to observe as under: "As far as these references are concerned, they are not accepted and stand rejected. As a corollary, it would follow that the other interests as can be reasonably identified with reference to public records like City Survey Records or the records with the Municipality in the form of assessment books, are required to be served with a notice under Sections 212 and 213 of the Act. Some difficulties are bound to be experienced by the Municipality in doing so, but that cannot be helped because the law requires that interests are to be heard before such drastic actions are intended to be taken to the detriment of those interests. Without laying down any law, but by way of only a suggestion, we would say that if the Municipality in such cases affixes a notice on the conspicuous part of the property to be dealt with under Sections 212 and 213 of the Act, it may in all probability serve the purpose, though it is always desirable to locate the interests as can be located reasonably and by reasonable search and serve them with notices. These references are accordingly rejected and stand disposed of."

6. Now it is interesting to note that in the light of the said decision, the respondent-plaintiffs in whose suits these questions were referred to the High Court by the learned trial Judge asked for leave to appeal to this Court under Article 133 of the Constitution as the references were rejected by the High Court by the impugned judgment. That request was rejected by the High Court. Thereafter the plaintiff-respondents have not thought it fit to challenge the aforesaid order of the High Court by filing any special leave petitions before this Court. The result is that the order of the High Court rejecting the references has become final qua the plaintiff-respondents. Once that happened, the order passed by the City Civil Court on 3-2-1979 fully operated and as per paragraph 3 of the said order extracted earlier, resulted in automatic dismissal of all the suits of the respondents. It is also not in dispute that once these suits had stood automatically dismissed pursuant to the impugned order of the High Court rejecting the references, no further steps were taken by the plaintiff-respondents by carrying the matters further. The net result is that the respondents' suits have stood dismissed and the challenge against the impugned notices under Section 212(1) have also stood rejected. In view of this situation, therefore, the further observations as found in para 7 of the impugned judgment clearly would remain unnecessary for decision as they have not got reflected in favour of the plaintiff-respondents in the ultimate decrees of the Court which were wholly in favour of the Corporation. Thus, no cause of action survived to the appellant-defendant Corporation to challenge the observations before us in the present proceedings, Therefore, the challenge to the observations found in the judgment of the High Court after rejecting the references which according to the learned Senior Counsel for the appellant would hurt the Corporation must be treated to have been rendered infructuous and superfluous in the light of the aforesaid developments which have resulted in automatic dismissal of the respondent-plaintiffs' suits.

7. Consequently, on the peculiar facts of this case, it must be held that the impugned observations made by the High Court in para 7 are rendered unnecessary for decision of the references which had to be decided under the four corners of Section 113 read with Order 46 Rule 3 of the CPC. Once, in our view, the High Court had answered the questions referred to it by rejecting the references, nothing further survived for the High Court to decide. Consequently, it must be held that on the combined operation of Section 113 and Order 46 Rule 3 CPC and also in the light of peculiar facts and circumstances of these cases as seen earlier, the impugned observations are found to be

unnecessary for decision in the respondents' suits as they had no legal effect on the result of the suits in connection with which they were made. We are, therefore, not called upon to pronounce on the correctness and legality of these impugned observations found in para 7 extracted earlier. These appeals, therefore, stand disposed of accordingly.

8. Before parting with these appeals, we must note one submission of learned counsel for the respondents. He stated that he has instructions to submit that after the decision of the High Court some of the plaintiffs were given alternative accommodation by the appellant-Corporation itself and similar treatment should have been given to the remaining plaintiffs by the Corporation being a State within the meaning of Article 12. Mr Dave, learned Senior Counsel for the Corporation, refutes these contentions and states on instructions that so far as his instructions go he cannot say as to whether any such alternative accommodations were given to any of the plaintiffs and if so, under what circumstances. In view of this stand taken by the learned counsel for the appellant, we are not called upon to say anything more on this aspect and we express no opinion thereon. Whatever remedy the respondents may have in this connection quite obviously will have no connection with the present proceedings which as seen earlier would stand on their own and would get disposed of by the present order. No order as to costs.