Supreme Court of India
State Of W.B vs Terra Firma Investment & Trading ... on 15 November, 1994
Equivalent citations: 1995 SCC (1) 125, JT 1994 (7) 524
Author: S N.P.
Bench: Singh N.P. (J)

PETITIONER:
STATE OF W.B.

Vs.

RESPONDENT:
TERRA FIRMA INVESTMENT & TRADING PVT. LTD.

DATE OF JUDGMENT15/11/1994

BENCH:
SINGH N.P. (J)
BENCH:
SINGH N.P. (J)
AHMADI A.M. (CJ)

CITATION:
1995 SCC (1) 125 JT 1994 (7) 524
1994 SCALE (4)1002

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by N.P. SINGH, J.- Two appeals, one on behalf of the State of West Bengal and the other on behalf of the Calcutta Municipal Corporation, have been filed against the same judgment of the Calcutta High Court.

2. By the impugned judgment, the High Court has held that Calcutta Municipal Corporation (Amendment) Act, 1990 (hereinafter referred to as 'the Amending Act') was unconstitutional and a direction has been given to Calcutta Municipal Corporation to proceed to sanction the applications for proposed construction of buildings rising above 13.5 metres in height which were pending on 18-12- 1989, in accordance with the building rules which were applicable on that date.

3. The Calcutta Municipal Corporation Act, 1980 (hereinafter referred to as 'the Act') came into force on 4- 1-1984 by which the earlier Calcutta Municipal Act, 1951 was repealed. Under the Act, power has been conferred on the State Government to make rules for all or any of the matters connected

with the Act, but till December 1990, no building rule under the Act could be made. By virtue of Section 635(2)(f) of the Act, Schedule XVI of the earlier Act which contained the Building Rules continued to remain in force under the Act.

4. It is the case of the appellants that Government of West Bengal felt the necessity of framing new Building Rules under the Act to cope with the present-day problems of the Calcutta's urban growth and civic existence keeping in view the accentuating traffic congestion, dearth of open space, lack of suitable facility for sewerage and sanitation and other amenities. The old Building Rules were found to be not suitable and appropriate for the construction of buildings, particularly, high-rise ones. So a decision was taken to frame new Building Rules to regulate indiscriminate growth of constructions of buildings in Calcutta. With that object, the State Government formed an Expert Committee, consisting of Secretaries of different Departments concerned, as well as the Chief Government Architect, Public Works Department, and the Municipal Commissioner of Calcutta for framing the new Building Rules. It is said that after thorough and exhaustive consideration by the Expert Committee, the Draft Building Rules were finalised, which were modified in the light of representations, suggestions and objections received from various official and non- official quarters by the State Government. Before such rules could be brought in force, different proceedings were initiated in the High Court of Calcutta in which ex parte orders of injunction were granted restraining the State Government from publishing the rules in question. In the meantime, more and more applications continued to be submitted to the Calcutta Municipal Corporation for sanction of high-rise buildings under the old Building Rules. As there was no chance of proceedings pending before the High Court being disposed of, a decision was taken by the State Government to impose a ban on the submission of building plans for high-rise construction for a period of one year within which period it was expected that the new rules shall come in force. As the legislature was not in session, Calcutta Municipal Corporation (Amendment) Ordinance, 1989 was promulgated with effect from 18-12-1989 by which a new section i.e. Section 398-A was introduced into the Act, which is as follows:

> "398-A. (1) Notwithstanding anything contained in this Act or in any other law for the time being in force, with effect from the date of coming into force of the Calcutta Municipal Corporation (Amendment) Ordinance, 1989 (hereinafter referred to in this section as the said Ordinance) and for a period of one year from such date (hereinafter referred to in this section as the said period), no person shall apply for sanction of any plan to erect a building exceeding thirteen and a half metres in height.
>
> (2)Any application for sanction of any plan to erect a building exceeding thirteen and a half metres in height, submitted by any person-
>
> (a) before the coming into force of the said Ordinance and lying pending for such sanction on the date of coming into force of the said Ordinance, or
>
> (b) at any time during the said period, shall stand rejected forthwith. (3)Any person whose application for sanction of any plan to erect a building exceeding thirteen and

> a half metres in height stands rejected under sub-section (2), may apply afresh for such sanction in accordance with the provisions of this Act and the rules made thereunder on the expiry of the said period.
>
> (4)Any fee paid by any person along with his application for sanction of any plan to erect a building exceeding thirteen and a half metres in height which stands rejected under sub-section (2), shall, at his option, be refunded to him or adjusted towards the fee payable by him for fresh application for such sanction under sub-section (93)."

In view of sub-section (1) of the section aforesaid, for a period of one year no application could be made for sanction of high-rise buildings beyond 13.5 metres. Sub-section (2) of Section 398-A provided that the applications for such sanction which were pending on the date when the Ordinance came into force would stand rejected. Sub-section (3) said that fresh application of sanction should be made for such high-rise construction after the period of one year was over. The aforesaid Ordinance was replaced by the aforesaid Amending Act.

5. During the period of one year with effect from 18-12- 1989 the injunction orders passed by the Calcutta High Court were vacated and the new Building Rules (hereinafter referred to as 'the Building Rules') were published in the Official Gazette on 12-12-1990.

6. A writ petition had been filed by the respondent challenging the constitutional validity of the Amending Ordinance, which as already stated above was later replaced by an Amending Act of 1990. A learned Single Judge came to the conclusion that the said writ petition had become infructuous, in view of the expiry of the period of one year during which a ban had been imposed on making applications for sanction of any plans to erect a building exceeding 13.5 metres in height. The respondent filed an appeal against the judgment aforesaid. The Division Bench allowed the said appeal of the respondent saying that, an ad hoc legislation imposing embargo on high-rise construction for a year was pointless. The haste inherent in such legislative embargo was also bound to create discrimination and other maladjustments. It was said that the Ordinance had been professedly promulgated to check unplanned and uncontrolled development of high-rise structures, but any such legislative check should have been imposed only after in- depth study of the various factors involved in the problem. The learned Judges were also of the opinion that any such measure should have been prospective and should not have affected the cases pending for sanction, otherwise it was bound to lead to irrational discrimination. It was also pointed out that structures within the vertical limit may be more injurious to the city than the horizontal structure which had not been taken note of by the legislation. They were also of the opinion that the ban being absolute and extending to the entire city without any power of relaxation was patently unreasonable. The Amending Act was held to be unconstitutional. A direction was given to the Calcutta Municipal Corporation to dispose of all applications for sanction of building exceeding 13.5 metres in height, pending as on 18-12-1989 in accordance with law, i.e., the Building Rules as in force on that date and not the Rules which have come into force later.

7. Village life in India during the British rule remained self-sufficient and maintained only limited contacts with the towns and cities. For most of the villagers, the urban environment was alien,

unfriendly and alienating. This was one of the principal reasons for low rate of urbanisation during the British rule. After independence and with sudden rise in the population, there was influx of people from rural areas to different towns and cities. Then it was felt that problems caused by such migration could be tackled and solved only by planned growth of the urban sector. There is no halt to this migration problem. This has resulted in deterioration of the living condition in big towns. In most of the States, different Acts have been enacted to contain this threat and challenge. Master Plans for development of areas, Zonal Developmental Plans for each of the zones have been framed to control the use of land for various purposes, by acquisition, development and disposal of land.

8. With the new phenomenon of migration of millions from rural areas to the cities, a challenge has been thrown to those who have to look after the planned growth of the cosmopolitan cities and urban areas, as to how to strike a balance between cry for a roof and restricting the areas from being converted into slums by unplanned and mushroom growth of buildings. With that object in view, different Improvement Trusts, Development Authorities and Municipal Corporations have been, from time to time, replacing the building rules in respect of the future growth of different metropolitan cities and urban areas. The task obviously is not very easy. The experience of the courts have been that there is no unanimous opinion, even in respect of one issue-whether the growth should be allowed to be vertical or horizontal. The controversy in the present case appears to be the result of this conflict.

9. It is well known that Calcutta is one of the oldest metropolitan cities in this country with a population unknown to other parts of the country. In this background, any decision taken by the Municipal Corporation in respect of the construction of high-rise buildings has to be taken cautiously and after due deliberation. Thought has to be given to every aspect of the matter. It appears that because of the orders of injunctions passed by the High Court new Building Rules could not be published and in the meantime plans for high-rise buildings were being filed before the Corporation in accordance with old Building Rules. In this background a ban in respect of passing of the plans for high-rise buildings beyond 13.5 metres for one year was imposed.

10.Can such provision be held to be unreasonable, arbitrary and irrational so as to be held to be violative of Article 14 of the Constitution? Normally, it is not for the courts to examine the building regulations framed by Development Authorities, Improvement Trusts and other statutory authorities entrusted with such power under different statutes unless any of such rule or bye-law can be held to be beyond the power vested in them by the statutes concerned, or is held to be hit by any of the provisions of the Constitution. It need not be pointed out that the authorities who have been entrusted for framing the building laws and bye-laws, are expected to apply their mind not only to the existing situation prevailing in any metropolitan city or in an urban area, but they have also to keep an eye and foresee the situations which may arise in the next century or even later. The development of a city or an urban area is to last for centuries. Because of that such authorities are expected to anticipate and foresee the problems which may arise with further growth of population.

11.The teamed Advocate General appearing for the appellant-State rightly pointed out that the High Court has purported to substitute its own judgment on question of necessity and satisfaction of issuing the Amending Ordinance which was later replaced by an Amending Act. We fail to

understand as to how the High Court has come to a finding that before issuing the Ordinance the necessity and requirement of imposing the ban on submission of plans exceeding the height of 13.5 metres had not been properly examined. All the relevant materials were brought before the High Court to show that a committee consisting of high officials and experts of the State Government and Calcutta Municipal Corporation had been entrusted with the responsibility of framing the new Building Rules. Such Building Rules could not be published because of interim orders passed in different writ applications filed before the High Court. Then the Amending Ordinance was issued putting a ban on applications for passing plans of buildings exceeding 13.5 metres in height for a period of one year.

12. The Statement of Objects and Reasons of the Amendment Act says:

"Of late a great deal of concern has been caused to the State Government by the problems arising out of unplanned and indiscriminate construction of high-rise buildings in Calcutta inasmuch as such construction has resulted in increased load on sewerage and drainage systems, acute problems of traffic management, increased density of population, reduced availability of open space, increased problems relating to conservancy, etc.

2.As an interim step, before introduction of permanent measure to cope with the problems as aforesaid, the State Government decided to amend the Calcutta Municipal Corporation Act, 1980, in order to prevent construction of high-rise buildings in Calcutta for a period of one year for the present.

3.As the Legislative Assembly was not in session and as it was necessary to take immediate action, an Ordinance, namely, the Calcutta Municipal Corporation (Amendment) Ordinance, 1989 (West Bengal Ordinance No. IX of 1989) was promulgated.

4. The Bill seeks to continue the provisions of the said Ordinance."

13. According to the respondent who is engaged in the business of construction of multi-storeyed buildings and selling of plots or portions from multi-storeyed buildings, had submitted a plan on 24-3-1989 before the Calcutta Municipal Corporation for construction of a building having height exceeding 13.5 metres at Premises No. 104, Ultadanga Main Road, Calcutta. It had submitted the plan which was in accordance with the Building Rules then in force. While the said plan was pending for consideration before the Municipal Corporation for sanction, on 18-12-1989, the aforesaid Amending Ordinance came in force putting an embargo in respect of passing plans for building exceeding the height of 13.5 metres for a period of one year. According to the respondent, from the proceedings of the meetings of the Expert Committee appointed by the State Government, it does not appear that there was any justification or valid reasons for imposing a ban for a period of one year by aforesaid Section 398-A(1). It was also pointed out that some plans which had been pending sanction were passed as late as on 14-12-1989, although the recommendations against buildings exceeding 13.5 metres in height had been made as early as on 25-11-1988. Reference was made to different rules which were in force prior to the imposition of the ban w.e.f. 18- 12-1989 and coming into force of the new Building Rules of 1990.

14. We fail to appreciate as to how the provisions of the Amending Ordinance/Act can be held to be violative of Article 14 of the Constitution merely on the ground that it imposes a ban on passing plans of buildings exceeding 13.5 metres in height for a period of one year. Admittedly, that period of one year was over when the writ petition was heard by the learned Single Judge. Thereafter the respondent and others were entitled to submit fresh plans for construction of multi-storeyed buildings according to the new Building Rules. The new Building Rules had been framed by an Expert Committee and after consideration of different objections from different sections. How can the respondent claim an absolute or vested right to get his plan passed by writ of a court, merely on the ground that such plan had been submitted by him prior to 18-12-1989? By mere submission of a plan for construction of a building which has not been passed by the competent authority, no right accrues. The learned Judges of the High Court should have examined this aspect of the matter as to what right the respondent had acquired by submission of the plan for construction of the high-rise building before its application was rejected by a statutory provision.

15. It is well settled that no malice can be imputed to the legislature. Any legislative provision can be held to be invalid only on grounds like legislative incompetence or being violative of any of the constitutional provisions. The learned counsel who appeared for the respondent could not point out any infirmity in the Amending Ordinance/Act. The learned counsel only referred to different proceedings and resolutions of the Expert Committee, which according to us, have no bearing so far as the provisions of the Amending Ordinance/Act are concerned. In any case while judging the validity of the Amending Ordinance/Act, the proceedings of the meeting of the Expert Committee have no bearing or relevancy. This Court in Usman Gani J. Khatri v. Cantonment Board1 pointed out that builders do not acquire any legal right in respect of the plans until sanctioned in their favour. It was also said: (SCC p.469, para 24) "In any case the High Court is right in taking the view that the building plans can only be sanctioned according to the building regulations prevailing at the time of sanctioning of such building plans. At present the statutory bye-laws published on 30-4-1988 are in force and the fresh building plans to be submitted by the petitioners, if any, shall now be governed by these bye-laws and not by any other bye-laws or schemes which are no longer in force now. If we consider a reverse case where building regulations are amended more favourably to the builders before sanctioning of building plans already submitted, the builders would certainly claim and get the advantage of the regulations amended to their benefit."

16.Accordingly it has to be held that the High Court was in error in declaring the provisions of the Amending Ordinance/Act as unconstitutional and invalid. The appeals are allowed and the impugned judgment of the High Court is set aside. We also direct the respondent to pay cost of Rs 5000 (Five thousand only) to the appellant-State.