

ITEM NO.10

COURT NO.7

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CIVIL) No.D23708/2017

(Arising out of impugned final judgment and order dated 26-02-2016 in CA No. 221/2013 29-02-2016 in CA No. 221/2013 04-05-2017 in RP No. 3720/2017 passed by the High Court Of Judicature At Bombay)

MAHARASHTRA CHAMBER OF HOUSING INDUSTRY
VERSUS

Petitioner(s)

MUNICIPAL CORPORATION OF GREATER MUMBAI & ORS.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.73411/2017-CONDONATION OF DELAY IN FILING and IA No.73415/2017-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.73414/2017-PERMISSION TO FILE LENGTHY LIST OF DATES)

Date : 15-03-2018 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.A. BOBDE

HON'BLE MR. JUSTICE L. NAGESWARA RAO

For Petitioner(s) Mr. Mukul Rohatgi, Sr. Adv.
Mr. Shyam Divan, Sr. Adv.
Mr. Kunal Vajani, Adv.
Ms. Padhma Lakshmi Iyengar, Adv.
Mr. Nikhil Rohtgi, Adv.
Ms. Priyakshi Bhatnagar, Adv.
Mr. Shashank Khurana, Adv.
Mr. Pranaya Goyal, AOR

For Respondent(s) Mr. Ranjit Kumar, Sr. Adv.
Mr. Dhruv Mehta, Sr. Adv.
Mr. J.J. Xavier, Adv.
Mr. Ashish Wad, Adv.
Mrs. Jayashree Wad, Adv.
Ms. Sukriti Jaggi, Adv.
For M/S. J S Wad And Co, AOR

Mr. C.U. Singh, Sr. Adv.
Mr. Rishabh Parikh, Adv.
Mr. E. C. Agrawala, AOR
Mr. Arnabh Behari, Adv.

UPON hearing the counsel the Court made the following
O R D E R

These petitions have been preferred by the petitioner for seeking permission to carry on the construction which has been prohibited by the impugned judgment and order/s passed by the High Court.

We make it clear that this order is not intended to set aside or modify the aforesaid impugned judgment. We have considered the matter only in order to explore the possibility of safe method of permitting certain constructions in the city of Mumbai for a limited period to pave the way for further orders that may be passed.

Prima facie, we are satisfied that a total prohibition, though selective, has serious ramifications on housing sector which is of great significance in a city like Mumbai. It also has a serious impact on the financial loans which have been obtained by the developers and builders. Such a ban makes serious inroads into the rights of citizens under Article 19, 21 and 300A of the Constitution of India. Though it might be equally true that the activities and the neglect in disposing of the debris invades the rights of other citizens under Article 21 etc. That issue is left open for a proper determination.

We have heard the matter on several occasions and we are of the considered view that the following order should govern the construction activities in the city of Mumbai :

Primarily, the ban has been imposed by the Bombay High Court because of alarming impact of the inability of Respondent No.1 -

Municipal Corporation of Greater Mumbai (for short, the 'Municipal Corporation') to deal with and safely dispose of the solid waste and construction debris that is generated by the activities of construction of buildings.

It was however argued before us that this construction debris can be safely disposed of at designated sites, whoever they belong to, provided the same are available for receiving and storing this debris. This, no doubt, assumes that construction activity will go on and that itself has deleterious effect on the population because of the waste particles which are dispersed in the air.

We therefore direct that any construction that is permitted hereafter for the purpose of this order shall be only after adequate safeguards are employed by the builders for preventing dispersal of particles through the air. This shall be incorporated in the IOD, unless it is already so incorporated.

According to the Municipal Corporation, ten sites have been located and inspected along with the representative/s of the Monitoring Committee. The land owners have given the consent or 'No Objection Certificate' (NOC) for bringing such debris onto specified locations which require to be filled with earth. In another words, these sites require land filling which will be done by this debris.

The Municipal Corporation shall permit a builder or developer to carry on construction on their sites by imposing the conditions in the IOD or any such permission, that the construction debris generated from this particular site, shall be transported and deposited in specific site inspected and approved by the Municipal

Corporation.

The Municipal Corporation shall specify such a site meant for deposit of construction debris in the building permission or IOD. It shall also ensure compliance by regular inspection of both, the construction site and the landfill site. Any breach will entail the cancellation of the building permission or IOD and the work will be liable to be stopped immediately.

The landfill site shall be governed by the Construction and Demolition Waste Management Rules, 2016, which came into force with effect from 29.3.2016. In particular, the landfill sites shall be the "Sanitary landfill sites" as defined in the Solid Waste Management Rules, 2016. The Municipal Corporation shall ensure that the criteria "for development of facilities at the sanitary land-fills" shall be applied to the landfill sites as specified in paragraph (B) of Schedule I to the Solid Waste Management Rules, 2016. These Rules will apply to the extent they are relevant and necessary in relation to the landfill sites which are permitted to be used for disposal of construction debris under this order.

The Municipal Corporation shall not permit any construction whether in respect of pre-existing IOD or fresh IOD unless it has first located a landfill site and has obtained 'No Objection Certification' or consent of the land owner that such debris may be deposited on that particular site. The Municipal Corporation shall incorporate in the IOD the condition that the construction is being permitted only if such construction debris is deposited.

In so far as the 'small generators' of Construction and Demolition ["C&D"] Waste are concerned, the C&D Waste shall be

disposed of in accordance with the 'Debris On-Call Scheme' initiated by Respondent No.1 Municipal Corporation, whereunder the agencies appointed by the Respondent No.1 Municipal Corporation shall through its authorised appointed agencies pick up and collect the C&D Waste which shall be transported to/unloaded at the designated disposal sites and used for creating infrastructure facility of dumping grounds, covering of Municipal Solid Waste and preparation of internal roads/loops within the dumping ground premises as well as in accordance with the provisions of Construction and Demolition Waste Management Rules, 2016.

In so far as the 'large generators' of C&D Waste are concerned, the C&D Waste shall be disposed of as per the Waste/Debris Management Plan submitted by the owner/developer at the time of applying for an IOD and as approved by the Solid Waste Management department of Respondent No.1 Municipal Corporation, wherein neither Deonar nor Mulund dumping sites shall be included as designated disposal sites as well as in accordance with the provisions of Construction and Demolition Waste Management Rules, 2016.

In the event for any reason whatsoever the consent given by the disposal site owner/authority is revoked and/or in the event the time limit during which the disposal site was available has expired, the relevant construction activity will be stopped after issuance of a Show Cause Notice and till such the Waste Management Plan/Debris Management Plan has been appropriately amended to provide a new disposal site for dumping of C&D Waste and is approved by Respondent No.1 Municipal Corporation.

The applicant for development permissions shall give the Bank Guarantee to the tune of Rs.5 lacs to Rs.50 lacs depending upon the size project and mode of development, which bank guarantee shall remain in force solely for the purpose of ensuing compliance of the Waste Management Plan/Debris Management Plan approved by Respondent No.1 Municipal Corporation from time to time, till the grant/issuance of the Occupation Certificate.

The Monitoring Committee shall be entitled to inspect the record of the Municipal Corporation for pertaining to the grant of IODs and shall also be entitled to visit and inspect the landfill sites. The Monitoring Committee shall be entitled to bring to the notice of the Municipal Corporation any breach in the permission or in the conditions of IOD of building permission. The Municipal Corporation shall pass a speaking order on such objections within a period of one month.

In view of the above, the Municipal Corporation shall submit a detailed report to this Court after the expiry of six months. This order shall remain in force for a period of six months from today.

It is made clear that no construction debris will be carried for disposal to the Deonar and Mulund dumping sites.

List the matter after six months along with the report of Respondent No.1 Municipal Corporation.

(SANJAY KUMAR-II)
COURT MASTER (SH)

(INDU KUMARI POKHRIYAL)
ASST.REGISTRAR