

ITEM NO.4

Court No.2

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

Petition(s) for Special Leave to Appeal (Civil) No(s).15175/2010

(From the judgement and order dated 03/05/2010 in  
WP No. 974/1999 of The HIGH COURT OF BOMBAY)

NM No. 614/2009 &amp;

ACKRUTI CITY LTD.

Petitioner(s)

VERSUS

ANIL GULABDAS SHAH &amp; ORS.

Respondent(s)

(With appln(s) for exemption from filing c/c of the impugned  
Judgment and prayer for interim relief and office report ))

Date: 28/05/2010

This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR. JUSTICE C.K. PRASAD  
(VACATION BENCH)

For Petitioner(s)

Mr. Mukul Rohtagi, Sr. Adv.  
Ms. Indu Malhotra, Sr. Adv.  
Mr. Narharu Singh, Adv.  
Mr. Rohit Bhat, Adv.  
Mr. Vikas Mehta, Adv.

For Respondent(s)

Respondent No.1 (Caveator) in person

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

At the commencement of hearing, we pointed out to respondent No.1, who is appearing in person that the language used by him in the fax message sent to this Court for the purpose of adjournment was highly intemperate and indecorous and he had cast aspersion on Mr. Vikas Mehta, Advocate representing the petitioner. We also indicated to him that unless he withdraws the allegations levelled against the learned counsel,

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the Court will not be inclined to hear him.

After making some submissions, respondent No.1 sought pass-over for the purpose of filing an affidavit to tender apology for using intemperate and indecorous language in the fax message.

In the post-lunch session, respondent No. 1 filed his affidavit. We have perused the same and are convinced that he has not tendered apology expressing regret for using the intemperate and indecorous language against the counsel representing the petitioner. Therefore, the affidavit of respondent No. 1 is rejected.

Notwithstanding the above, we have decided to hear the respondent so that he may not have a grievance that the Court has passed order without complying with the rules of natural justice.

This petition is directed against order dated 03.05.2010 passed by the Division Bench of the Bombay High Court in Notice of Motion No.614 of 2009 in Writ Petition No.974 of 1999 whereby the petitioner has been directed not to continue with the ongoing construction on CTS No.429. The operative part of that order reads as under:

"Hence, without prejudice to the contentions of parties, we direct that respondent No. 4 shall continue with the on going construction on CTS 429 until further orders and this order shall be binding on all the respondents. We also make it

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clear that in case the petitions are not heard and decided for any reasons attributable to the petitioner by 31st July, 2010, the respondent No. 4 is at liberty to apply for vacating this interim protection in respect of CTS No. 429."

It is borne out from the record that the parties have been litigating for last more than one decade in relation to the rehabilitation project undertaken by the petitioner on an area measuring 52,508 square meters. Respondent No.1, who and whose family are claiming ownership of 1200 square meters out of the total area being developed by the petitioner filed Writ Petition No.974 of 1999 questioning the acquisition of the disputed land under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971.

After two years of filing the writ petition, the High Court passed an interim order dated 10.2.2000 in Writ Petition

No.974 of 1999 and Writ Petition No.1113 of 2000. The petitioner filed Notice of Motion Nos.183 and 184 of 2002 for vacating the interim order and for allowing it to continue with the construction on CTS Nos.429 (Part) and 449 (Part). By an

order dated 28.2.2003, the High Court vacated the stay order.

SLP(C) NO. (CC) 4344 of 2003 filed by respondent No.1 was dismissed by this Court on 10.1.2005 by recording the following order:

"Heard the parties.

The special leave petitions are dismissed on the ground of delay as well as merits. In the facts and circumstances of the case, we direct the High Court to dispose of the writ petitions within a period of six months from the receipt of copy of

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this order."

After about three years, the High Court entertained Notice of Motion No.566 of 2005 filed by respondent No.1 and passed order dated 25.1.2006 granting stay in his favour albeit

without hearing the petitioner. That order was challenged by the petitioner in SLP(C) No.5999 of 2006. This Court granted leave and disposed of Civil Appeal No.2672 of 2006 by recording the following order:

"It is not in dispute that the matter was not on Board on that day. The notice of motion was made absolute only upon the mentioning by the learned counsel appearing on behalf of the concerned respondent as also the other affected persons. The petitioner has not been heard. In this view of the matter, the impugned judgment cannot be sustained. It is set aside accordingly. The matter is remitted to the High Court for consideration thereof afresh. We would, however, request the High Court to consider the desirability of disposing of the notice of motion as also the writ petition as expeditiously as possible, preferably within a period of three months from today.

The appeals are disposed of."

Despite the direction given by this Court on 10.1.2005 in SLP(C) No. (CC) 4344 of 2003 and observations made in order

dated 8.5.2006 passed in Civil Appeal No. 2672 of 2006 for disposal of the writ petition, the High Court has not been able to do so for last more than four years.

By taking advantage of the continued pendency of the writ  
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petition, respondent No.1 filed Notice of Motion No.614 of 2009.

The petitioner filed reply to contest the notice of motion but without considering the fact that two stay orders passed in

favour of respondent No.1 had been vacated on earlier occasion,

the Division Bench of the High Court passed order dated 14.12.2009 and again stayed the construction being undertaken by the petitioner. That order became the subject matter of

challenge in SLP(C) Nos.2748-2749 of 2010 which were disposed of by this Court on 5.2.2010 by recording the following order:

"Heard Mr.R.F.Nariman, learned senior counsel appearing on behalf of the petitioner and Mr.Anil Gulabdas Shah who has appeared in person.

Since the High Court is yet to finally decide the Notice of Motion No.614/2009, we do not consider it proper to interfere with the impugned order, which is an interlocutory order and feel that ends of justice will be met by requesting the High Court to expedite the disposal of the Notice of Motion.

The special leave petitions are disposed of with the request to the High Court of Bombay to dispose of Notice of Motion No.614/2009 as early as possible but latest by 26th February, 2010."

However, the proceedings of the case show that the matter could not be heard within the time schedule fixed by this Court and by the impugned order, the Division Bench again restrained the petitioner from continuing with the ongoing construction on CTS No.429.

We have heard Mr. Mukul Rohtagi and Ms. Indu Malhotra, learned senior counsel appearing for the petitioner and  
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respondent No.1 (Caveator), who has appeared in person at considerable length and carefully perused the record. Although, this Court is loath to interfere with the discretion exercised by the High Court to grant or refuse interim relief in a pending

matter, having regard to the peculiar facts of this case, we are prima facie, convinced that the High Court committed serious error in exercising discretion to pass an interim order in favour of respondent No. 1 ignoring that similar interim orders passed earlier were vacated by the High Court or this Court.

The impugned order does not show that the High Court took note of order dated 28.2.2003 passed by the coordinate Bench. The High Court also overlooked order dated 28.7.2006 passed in Notice of Motion No. 565 of 2005 in Writ Petition No. 1113 of 2000 and Notice of Motion No. 566 of 2005 in Writ Petition No. 974 of 1999 whereby the prayer made by respondent No.1 for interim relief was rejected. We have no doubt that if the High Court had taken pains to scrutinize the records, it would not have passed the impugned order ignoring the fact that stay granted in favour of respondent No.1 on earlier occasions were vacated and similar prayer had been refused on 28.7.2006 and the petitioner has already raised some construction at the site.

Issue notice. Respondent No.1 (Caveator) accepts notice. Reply may be filed by respondent No.1 within four weeks.

Notice to the remaining respondents returnable in August, 2010.

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Dasti, in addition is also permitted.

In the meanwhile, the operation of the impugned order shall remain stayed.

However, it is made clear that the construction made by the petitioner will remain subject to the final disposal of the writ petitions pending before the High Court and this petition.

It is also made clear that this order shall not preclude the High Court from taking up the main case for hearing which in terms of the impugned order is required to be disposed of by the end of July, 2010. We request the High Court to take up the matter for final disposal and make an endeavour to dispose of

the same before the end of July, 2010 or latest by the end of August, 2010 without granting any adjournment to either party.

(Shashi Sareen)  
Court Master

(Phoolan Wati Arora)  
Court Master