

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

I.A. Nos. 7-8/2013 in
Petition(s) for Special Leave to Appeal (Civil) No(s).22182-22183/2012

(From the judgement and order dated 11/05/2012 in WP No.977/2010,WP
No.1134/2010 of The HIGH COURT OF BOMBAY)

BOMBAY DYEING & MFG.CO.LTD. Petitioner(s)

VERSUS

MONITORING COMMIT.& ORS. Respondent(s)

(for directions and I.A. Nos. 9-10/2013 - appln.(s) for intervention and
I.A Nos. 11-12/2013 and 13-14/2013 - appln(s) for impleadment and office
report))

Date: 02/08/2013 These IAs were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.M. LODHA
HON'BLE MR. JUSTICE MADAN B. LOKUR

For Petitioner(s) Mr. F.S. Nariman, Sr. Adv.
Mr. R.N. Karanjawala, Adv.
Ms. Ruby Singh Ahuja, Adv.
Ms. Meena Doshi, Adv.
Ms. Nina Nariman, Adv.
Ms. Jigna Kapadia, Adv.
Ms. Deepti Sarin, Adv.
Mr. Ishaan Gaur, Adv.
Ms. Manik Karanjawala, Adv. for
M/S. Karanjawala & Co.

For Respondent(s) Mr. Nitin S. Tambwekar, Adv.
Mr. B.S. Sai, Adv.
Mr. K. Rajeev, Adv.

Mr. Sanjay Singhvi, Adv.
Ms. Aparna Bhat ,Adv
Mr. P. Ramesh Kumar, Adv.

Mr. Shekhar Naphade, Sr. Adv.
Mr. S. Sukumaran, Adv.
Mr. J.J. Xavier, Adv.
Mr. Anand Sukumar, Adv.
Mr. Bhupesh Kumar Pathak, Adv.
Ms. Meera Mathur ,Adv

Mr. Subod S. Patil, Adv.
Ms. Sujata Kurdukar ,Adv

Mr. Colin Gonslves, Sr. Adv.
ms. Amiy Shukla, Adv.
Ms. Jyoti Mendiratta ,Adv

Mr. Chirag M.Shroff ,Adv.

Mr. Abhishek Singh, Adv.

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

The High Court in its judgment dated May 11, 2012 reached its conclusion in para 79 of the judgment. For the present purposes, the conclusion reached in para 79C is relevant which reads as follows :-

"(C) In view of Note-VII to Regulation 58(1)(b), the petitioner-company has already become liable to hand over the following lands earmarked for MHADA (for public housing/mill workmen's housing) and for Municipal Corporation of Greater Mumbai (for open green spaces, such as Recreation Ground) to MHADA and Municipal Corporation of Greater Mumbai respectively which areas are also mentioned in para 295 of the Supreme Court decision in (2006) 3 SCC page 531.

	MCGM	MHADA
	in sq.mtrs.	in sq.mtrs.
Bombay Dyeing(Spring Mill, Wadala)	25,775.24	26,556.30
Bombay Dyeing Textile Mill (Lower)"	7,052.87	5,770.52

2. The above judgment of the High Court was challenged before this Court in Special Leave Petition (Civil) Nos. 22182-22183 of 2012. On August 9, 2012, this Court, after hearing the senior counsel for the petitioner, dismissed the special leave petitions by the following order :-

"Heard Mr. Fali S. Nariman, learned senior counsel for the petitioner.

Special leave petitions are dismissed.

Question of law is kept upon.

Time of six months from today is granted to the petitioner for handing over possession of the lands set out in para 79(C) of the impugned judgment to the Municipal Corporation of Greater Bombay and Maharashtra Housing and Area Development Authority.

Para 4 of the order passed by the High Court on July 27, 2012 stands substituted as above.

In case petitioner fails to hand over possession as above, Municipal Corporation of Greater Bombay and Maharashtra Housing and Area Development Authority shall be at liberty to take possession of the concerned lands forcibly."

3. Now, by Interlocutory Application Nos. 7-8 of 2013, applicant-petitioner (for short, 'Bombay Dyeing') has brought to the notice of the Court certain events that have happened subsequent to the order dated August 9, 2012 and it is prayed that it may be permitted to hand over 32,827.90 sq. mts. area to Municipal Corporation of Greater Mumbai (MCGM) and 33,822.69 sq. mts. area (32,326 sq. mts. + 1496.07 sq. mts.) to Maharashtra Housing and Area Development Authority (MHADA) as shown in the modified lay out plan to be approved by the MCGM.

4. Inter-alia, the events subsequent to the passing of the order dated August 9, 2012 highlighted in the applications are as follows :

(a) Since the Applicant had been already expressly permitted by the Government of Maharashtra to integrate and obtain approval under DCR 58(6)(a) and (b), the applicant-com-pany had filed a fresh lay-out plan with MCGM for approval on 22nd August, 2012 showing the combined areas to be handed over to MCGM and MHADA at one location viz. At Spring Mills Wadala. This was responded to by MHADA by stating in its letter of 21.11.2012 (to MCGM) that in place of a 12 meters road shown in the lay-out plan of 16.12.2010 a 24 meter road would be required; the MCGM thereupon requested the Architect of Bombay Dyeing to incorporate MHADA's request in a fresh lay-out plan which was incorporated within the fresh lay-out plan of 19.12.2012 submitted for approval to MCGM.

(b) In the mean time prior to 19.12.2012, the 648 occupants of existing chawls (shown on CS No. 120) had also intimated through their Authorised Representative (Mr. Kalidas Kolambkar, MLA) that they were not agreeable to move to the new proposed location on CS No. 223 (in the plan of 16.12.2010) - since this was too far away from the existing location (on CS No. 120) and also because it was next to a burial ground.

(c) At the intervention of the Hon'ble Chief Minister of Maharashtra, the Petitioner/Applicant then agreed to relocate the chawls from C.S. No. 223 (shown on the plan of 16.12.2010) to C.S. No. 120 - where they were originally located. The representative of 648 chawl-occupants stipulated that the existing chawls-occupants be re-located in 3 new building to be constructed by Bombay Dyeing in lieu of existing chawls to which Bombay Dyeing agreed.

(d) All this necessitated a further modification to the lay-out plan (of 16.12.2010) as also to the proposed lay-out plan of 22.8.2012 - all such modifications including the lands to be handed over to MCGM to MHADA from the property of the Spring Mills, Wadala, was incorporated in a fresh lay-out plan submitted to MCGM on 19.12.2012 along with a letter of 19.12.2012 with a request to the MCGM to approve the revised lay-out "as early as possible so as to handover the MCGM/MHADA share prior to 8.02.2013, the last date fixed for handing over possession in this Hon'ble Court's Order of 09.08.2012.

(d) Copies of the letters of 11.12.2012 from Bombay Dyeing to the representatives of 648 chawl-occupants, copy of the letter dated 12.12.2012 from Bombay Dyeing to the Chief Minister of Maharashtra....."

5. In response to the above Interlocutory Applications, two affidavits have been filed by the Municipal Commissioner, MCGM. One on March 12, 2013 and the other on July 26, 2013. In the later affidavit, it is stated that amended lay out plan of two units of the Bombay Dyeing (Spring Mill at Wadala and Textile Mill at Lower Parel) is permissible as per the provisions of Regulation 58 of the Development Control Regulations, 1991. Then in para 14 of the affidavit, the Municipal Commissioner has stated as follows :-

"I say that the plans submitted by The Bombay Dying & Manufacturing Co. Ltd. are considered from the point of view of the share of the open mill land of MCGM and MHADA only. As regards to amenity open spaces of owner's share of the open mill land shown on C.S. No. 1/128(Pt) may not be acceptable to M.C.G.M. All other aspects of the layouts such as F.S.I. calculation, quantum and location of the amenity open spaces will be examined in detail separately while scrutinizing the layout as per provisions of the Development Control Regulations 1991 on merits."

6. Mr. Shekhar Naphade, learned senior counsel for the MCGM, reiterates that the amended lay out plan submitted by the Bombay Dyeing is acceptable to MCGM in principle subject to the observations made in para 14 of the affidavit filed by the Municipal Commissioner. He, however, submits that the amended lay out plan shall be considered only after the possession of the land is handed over to the MCGM.

7. Mr. Subod S. Patil, learned counsel appearing for the chawl occupants (represented by applicant No. 1 in Interlocutory Application Nos. 9-10 of 2013) submits that the chawl occupants are agreeable to the amended lay out plan submitted by the Bombay Dyeing.

8. There is objection to the amended lay out plan by the two Unions, namely, Girni Kamgar Sangharsh Samiti and Sarva Shramik Sanghatana. They are applicants in Interlocutory Application Nos. 13-14 of 2013 and Interlocutory Application Nos. 11-12 of 2013 respectively.

9. Having regard to the controversy raised before us in respect of the amended lay-out plan submitted by Bombay Dyeing to the MCGM, we are of the opinion that it will be in fitness of things if the above controversy is considered and decided by the High Court after hearing the concerned parties, two Unions and applicants in Interlocutory Application Nos. 9-10 of 2013. We are persuaded to adopt this course because effectively Bombay Dyeing is seeking modification of para 79C of the High Court's judgment dated May 11, 2012 in light of the subsequent events.

10. The Registry is, accordingly, directed to transmit the record of Interlocutory Applications Nos. 7-8 of 2013, 9-10 of 2013, 11-12 of 2013 and 13-14 of 2013 to the Bombay High Court. On receipt of the record of these applications, the Registry of the Bombay High Court shall register these applications and place them for consideration before the concerned Bench.

11. We request the High Court to hear these applications expeditiously, preferably within three months of the receipt of the applications and decide them by a speaking order. The matter is urgent because 648 chawl occupants are to be rehabilitated and relocated.

12. Needless to say that the order dated August 9, 2012 passed by this Court shall not come in any way in consideration of the above applications on their own merits.

13. Until the disposal of the above applications by the Bombay High Court and for a period of two months thereafter, no coercive steps shall be taken by the MCGM for taking possession of the land.

14. Interlocutory Application Nos. 7-8 of 2013, 9-10 of 2013, 11-12 of 2013 and 13-14 of 2013 shall be treated as disposed of in so far this Court is concerned.

|(Rajesh Dham)
|Court Master

| |(Renu Diwan)
| |Court Master

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