

ITEM NO.2

COURT NO.11

SECTION IX

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

Petition(s) for Special Leave to Appeal (Civil) No(s).32597/2009

(From the judgement and order dated 03/02/2009 in CWP No. 1706/2009  
of The HIGH COURT OF BOMBAY)

M/S MAJETHIA ENTERPRISES & ORS.

Petitioner(s)

VERSUS

MOHAN PRABHAKAR AMRE & ANR.

Respondent(s)

(With appln(s) for c/delay in filing SLP,exemption from filing  
O.T.,directions and office report)

WITH

SLP(C) NO. 32599 of 2009

(With appln(s) for c/delay in filing SLP and office report)

Date: 10/08/2010 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Mr. Shekhar Naphade, Sr. Adv.  
Mr. Ravindra Keshavrao Adsure,Adv.

For Respondent(s) Mr. Vinay Navare, Adv.  
For Ms. Abha R. Sharma,A.O.R.

Mr. Shivaji M. Jadhav ,Adv

UPON hearing counsel the Court made the following

O R D E R

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Delay condoned.

These petitions are directed against order dated 3.2.2009  
passed by the Division Bench of Bombay High Court in Civil Writ  
Petition No.1706 of 2009 titled "Mohan Prabhakar Amre versus The  
Municipal Commissioner for the Municipal Corporation of the City  
of Thane".

Respondent No.1 had filed writ petition for issue of a  
mandamus to respondent No.2 - Municipal Corporation, Thane to  
take steps for demolition of unauthorized construction allegedly  
raised by the petitioners herein.

The High Court, after taking cognizance of letter dated 12.1.2009 of the Executive Engineer, City Development Department, Thane Municipal Corporation, perusal of which revealed that persons named therein had carried out unauthorized construction and a complaint had been lodged under Sections 52 and 53 of the Maharashtra Regional Town Planning Act, 1966, gave the following direction:

"The corporation shall issue appropriate notices to them, find out as to whether the construction carried out by them is authorized or unauthorized construction after hearing them. If thereafter the Corporation comes to the conclusion that the construction by the persons named in the said letter dated 12.1.2009 is unauthorized construction, the Corporation shall take steps to demolish the said construction in accordance with the provisions of the MRTP Act and also under the provisions of the Bombay Provincial Municipal Corporation Act, 1949. All this

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exercise shall be completed by the Corporation as expeditiously as possible and within a period of 9 months from the date of receipt of the order by the Corporation. We make it clear that we have not expressed any opinion on merits. We desire that the Corporation should conduct an appropriate enquiry, give an opportunity to the affected persons and thereafter they take steps only if the corporation finds that the construction is unauthorized construction. In all this process, even though the petitioner is an adjoining holder of the plot, since he is affected as a result of unauthorized construction, he may also be given hearing by the Corporation."

After disposal of the writ petition, the competent authority of the Corporation issued notices to the petitioners and others, gave them opportunity of hearing and passed detailed order dated 4.8.2009, the operative portion of which reads thus:

"The construction mentioned in notice issued on 10/10/2003 under provision of section 260(1)(2) of Mumbai Provincial Municipal Act 1949 has not been shown in sanctioned plan under development proposal no.531(b). Hence in addition to sanctioned construction mentioned in notice is being held as unauthorized one. Subject to suit filed in the court related to this matter as also by taking into consideration the order passed in writ petition no.1706/2009 by Hon. High Court, the further action shall be proposed by Executive Engineer."

It is born out from the record that much before filing of

the writ petition by respondent No.1, the Corporation had initiated action against the alleged illegal construction made

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by the petitioners, who filed civil suits in the Court of Joint Civil Judge (Senior Division), Thane and orders of status quo were passed in both the cases.

In reply to the Court's query, learned counsel for the parties gave out that the suits filed by the petitioners are still pending and the order of status quo is operative in both the cases.

Shri Shekhar Naphade, learned senior counsel appearing for the petitioners in SLP(C) No.32597 of 2009 and Shri Ravindra Keshavrao Adsure, learned counsel appearing for the petitioner in SLP(C) No.32599 of 2009 invited our attention to the documents filed along with IA No.14 of 2010 in SLP(C) No.32597 of 2009 and argued that the impugned order is liable to be set aside because their clients were not made parties to the writ petition and they were not given opportunity of hearing by the High Court. Shri Naphade then submitted that the applications/representations made by the petitioners for regularization of unauthorized constructions are pending before the State Government and respondent No.2 and, therefore, this Court may clarify that the impugned order of the High Court will not prejudicially affect the consideration of the same.

Learned counsel for respondent Nos.1 and 2 supported the impugned order by arguing that the direction given by the High

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Court is innocuous and does not, in any manner, violate the rights of the petitioners. Learned counsel then submitted that the direction given by the High Court have already been complied with and, therefore, this Court may not make any observation, which may enable the petitioners to get the unauthorized constructions regularized.

We have considered the respective submissions and perused

the record including the documents filed along with I.A. No.14

of 2010 filed in S.L.P. (C) No.32597 of 2009.

It is true that

the petitioners herein were not impleaded as parties in the writ

petition filed by respondent no.1 and they did not get

opportunity to contest the prayer made by him but their

grievance has been substantially remedied because the competent

authority of the Corporation passed order dated 4.8.2009 after

giving them effective opportunity of hearing.

The High Court did not express any opinion on the merits

and demerits on the issue raised in the writ petition and left

it open to the competent authority to decide whether or not the

construction is authorized or unauthorized.

This being the

position, we do not find any valid ground to entertain the

petitioners challenge to the impugned order more so because the

competent authority of the Corporation has already passed the

consequential order after full compliance of the rules of

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natural justice.

The submission of the learned senior counsel that this

Court may make an observation which may facilitate consideration

of the applications/representations made by the petitioners for

regularization of the unauthorized constructions does not merit

acceptance because the suits filed by them are pending

adjudication before the competent Court. Any expression of

opinion by this Court on the merits and demerits of the case is

likely to prejudice either party.

Therefore, we do not find any

valid ground or justification to make any observation on the

issue of regularization of the unauthorized constructions made

by the petitioners.

The special leave petitions are accordingly dismissed.

Interim orders shall stand automatically vacated.

(A.D. Sharma)  
Court Master

(Phoolan Wati Arora)  
Court Master