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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos. 2588-2591 OF 2016

(Arising out of SLP(C) Nos. 150-153 of 2015)

MUNIRAJ R.KURMI AND ORS. ETC.

... Appellant(s)

Versus

STATE OF MAHARASHTRA AND ORS. ETC. ... Respondent(s)

O R D E R

Leave granted.

These appeal arise out of an Order dated 27.11.2014 passed by the High Court of Judicature at Mumbai whereby Writ Petition (L) No. 2959 of 2014 and W.P.(L) No. 2994 of 2014 have been dismissed.

Also under challenge is an Order dated 18.12.2014 passed by the High Court dismissing Review Petitions (L) No. 95 of 2014 and 96 of 2014.

Writ Petitions No. 2959 and 2994 of 2014 were filed by the appellants herein before the High Court to challenge an Order dated 10.11.2014 passed by the Executive Engineer, MHADA under Section 95 A of the Maharashtra Housing and Area Development Act, 1976 whereby the writ petitioners had been asked to vacate the premises in their occupation and shift to alternative accommodation being made

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available by the Co-operative Housing Society to facilitate re-development of the area in question. The challenge primarily rested on the applicability of Section 95A and the powers of the Executive Engineer to issue a direction like the one impugned in the writ petitions. The High Court examined the matter and found that there was no legal or other infirmity in the order passed by the Executive Engineer which had the sanction of law. Writ petitions were accordingly dismissed by the High Court by a common order dated 27.11.2014 assailed in the present appeals as already noticed earlier.

When the matters came up before us initially on 23.07.2015, several contentions were urged by learned counsel for the appellants, some of which even suggested that the entire process of allotment of additional land, grant of F.S.I. and related issues were in breach of the statutory provisions besides being prejudicial to public interest inasmuch as the authorities had not protected public interest while extending benefits which would enrich the builder engaged by the society for redevelopment. The contentions urged in that regard were noticed by us and directions for filing of additional affidavits and furnishing of additional information relevant to the questions urged at the Bar issued. For facility of reference, we may at this stage extract the Order passed by us on 23.07.2015:-

From a reading of the judgment delivered by the

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High Court in the Writ Petition No. 2654 of 2012 it appears that one of the questions that came up before the High Court was regarding the reallocation of the area under the occupation of members of Charkop Kandivali Ektanagar Cooperative Housing Society Ltd. The Slum Rehabilitation Authority had it appears received a letter dated 26 th October, 2009 from MHADA approving the reallocation of the land with the housing Society apparently on account of a certain MRTS Car Depot in or around their land. A new letter of intent was consequently issued on 3 rd

November, 2009 to the MHADA as land-owners, with copies to the Society as well as the developer. The circumstances in which the land

area of the Society, mentioned above, was reallocated were not however very clearly set out in the judgment nor has letter dated 26 th

October, 2009, been produced.

We, therefore, direct MHADA to place on record a copy of letter dated 26 th

October, 2009 with an additional affidavit explaining the circumstances in which land with the housing Society afore-mentioned was reallocated. The affidavit would also state whether the land so vacated or to be vacated by the society is amenable to any developmental activity including construction of any high-rise building on the same.

It is common ground that the original F.S.I. admissible to the land under the occupation of the Charkop Kandivali Ektanagar Cooperative Housing Society Ltd. was 1.2 + 0.8, This F.S.I. was raised by the Competent Authority to 2.5. According to Mr. Chandra Uday Singh, learned Senior Counsel appearing for respondent no.5-Developer, this increased F.S.I. was given on account of the clubbing of schemes under 33(5) and 33(14)(D) of the Development Control Regulations Act, 1991.

While it is not in dispute that F.S.I. was raised to 2.5 by 17,000 square feet land held by Charkop Kandivali

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Ektanagar Cooperative Housing Society Ltd., it is not clear as to the considerations received or promised for the said increased F.S.I. The Competent Authority shall therefore file an affidavit explaining the circumstances in which increased F.S.I. was permitted for the 17,000 square feet of the land with the society.

Our attention was also drawn during the course of the hearing to an Audit Report at page-406 of Vol.II of the SLP paper book from which it appears that over and above 17,000 square feet of the land available with Society, the Developer had been allotted an additional area measuring 73,714.04 square meters without following the normal procedure of allotment of such land. In case any additional land has actually been allotted to the developer, was there any consideration paid for the same shall have to be explained by the respondents. In case F.S.I. available to the additional land of 73,000 square meters has been added to the F.S.I. admissible to 17,000 square meters available with the Society, the consideration for such addition shall also be indicated.

A reading of the Audit Report suggests that the Developer had paid 9.39 crores towards Slum Rehabilitation in the process causing a financial loss of Rs.67.58 crores to the Exchequer apart from depriving the members of Charkop Kandivali Ektanagar Cooperative Housing Society Ltd. of affordable housing. The report further suggests that on account of the additional allotment of land, the developer will have a built-up area of 80,828.63 square meters without any corresponding benefit either to the public authorities or to the members of the Cooperative Society. The forwarding letter copy whereof has been placed at page 406 of the SLP paper book (Volume-II) has asked the Senior Deputy Accountant General to verify the facts mentioned in the Report and forward his comments

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regarding the same for inclusion in the next Audit Report of the Comptroller and Auditor General of India. There is nothing on record to show as to what were the comments given by the Senior Deputy Accountant General as to the facts mentioned in the Report, referred to above, and whether the facts mentioned were actually

included in the Audit Report of the Comptroller and Auditor General of India. Learned Counsel appearing for MHADA will, therefore, take instructions and file an additional affidavit alongwith copies of all the correspondences exchanged on the subject matter between different officers relating to the transaction in-question. A copy of the relevant Audit Report of the Comptroller and Auditor General of India shall also be produced. Since a copy of the Audit Report along with forwarding letter, mentioned above, was also forwarded to the Principal Secretary, Housing Department, Government of Maharashtra, counsel for the State of Maharashtra would take instructions and file an affidavit as to the action if any taken on the said report.

In the course of the hearing, Mr. V. Giri, learned senior counsel appearing for the appellant-Society, has produced before us a compilation of the documents that includes a site plan correctness whereof is seriously disputed by Mr. C.U. Singh, learned senior counsel appearing for the respondent-developer. The respondent would, therefore, be free to file additional documents including the site plans or schemes relevant to the controversy before the next date of hearing. Copies of the sanctioned plans will also be produced by the respondent-Developer and MHADA.

Post on Thursday, the 13 th
August, 2015.â- \235

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Affidavits in response with the above direction have been filed by the parties. We have also been taken through the contents of the said affidavit at the hearing today. It was contended on behalf of the appellants that the information demanded by this Court on several aspects referred to in the order extracted above has not been placed on record nor have the disclosures been faithful. It was also contended that the entire process of grant of higher F.S.I. was frowned upon even by the CAG in his report. It is also argued that the High Court had failed to address the issues that were so vitally connected with the validity of the on-going redevelopment scheme and thereby failed to protect the interest of the appellants and a large number of others who had found fault with the entire process.

On behalf of the respondents, it was on the other hand contended that the appellants had tried their luck in an earlier round of litigation which had failed. Second round of litigation was meant only somehow to stop the development process and raise issues which had been examined and determined against the appellants. It was also contended that the appellants had no reason to stop the development if the grievance was limited to additional facility as it appeared from the special leave petitions filed by them. It was submitted that grant of such additional facilities were matters which could have been agitated before the High Court but no such contention was raised at the appropriate stage.

We have given our anxious consideration to the submissions made at the Bar. It is common ground that out of a total of 393 tenements

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holders, as many as 357 have already given their consent for redevelopment of the area. It is also common ground that as many as 229 tenements already stand vacated. According to Mr. C.U.Singh, learned senior for respondent No. 5, 74 other tenement holders were resisting eviction from the tenements occupied by them against whom proceedings under Section 95A have been instituted by the competent authority. He submits that according to his information as many as 61 orders of eviction have already been passed in those proceedings but the appellants alone appear to have challenged the said eviction orders.

It is not in dispute that the rehabilitation building have already been constructed to the height of ten storeys in four different blocks

comprising as many as 334 flats. According to Mr. Singh, construction of the remaining blocks including the commercial ones could not be commenced because of the failure of the appellants and similar other occupants to vacate the premises in their occupation. According to Mr. Singh, the respondent-developer is paying an amount of Rs 40,00,000/- p.m. towards rental to such of the tenement holders as have vacated and are occupying the accommodation on rent elsewhere instead of the transit accommodation offered by the respondent. The amount spent on the construction of the flats as at present is estimated at Rs. 60,00,00,000/- It is in this backdrop that we asked learned counsel for the appellants if the appellants would like the issues now raised before us to be considered by the High Court subject to the appellants vacating the tenements in their occupation for

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otherwise, we saw no reason to interfere with the order. Learned counsel for the appellants submit that while the appellants would vacate the tenements under their occupation to avoid any further delay in the completion of the project, the issues which have been raised by the appellants not only as to the extent of facilities but also as to the extent of accommodation are entitled to need be examined by the High Court upon remand. It was also contended that the High Court could be requested to examine the question whether the appellants are entitled to any benefit under Regulation 33(5) of the Development Control Regulations. Mr. Singh was not averse to any such examination by the High Court subject to all just exceptions and without prejudice to the contentions that may be available to the parties. In the circumstances, therefore, we dispose of these appeals with the following directions:

- 1) The appellants shall vacate the premises in their respective occupation as far as possible within eight weeks from today failing which the competent authority shall be free to take such action as may be necessary and permissible in law.
- 2) The question whether the appellants are entitled to any additional facilities under Regulation 33(5) of the DCR or any additional advantage or concession are left open to be examined by the High Court.
- 3) The High Court would also examine the issues to which we have adverted in our Order dated 23.07.2015 uninfluenced by the observations made by it in the impugned order in the earlier round of

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litigation. We however express no final opinion in regard to the merits of the contentions that may be open to the parties on those issues. Needless to say that upon vacation of the premises in their occupation, the appellants shall be entitled to claim rental as per the development agreements. No costs.

.....CJI.
(T.S.THAKUR)

.....J.

(SHIVA KIRTI SINGH)

.....J.

(UDAY UMESH LALIT)

New Delhi,
Dated: 9 th
March, 2016.

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ITEM NO.2 COURT NO.1 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 (C) No(s). 150-153/2015
(Arising out of impugned final judgment and order dated 27/11/2014
in WP No. 2994/2014 18/12/2014 in RP No. 95/2014 27/11/2014 in WP
No. 2959/2014 18/12/2014 in RP No. 96/2014 passed by the High Court
Of Bombay)

MUNIRAJ R. KURMI AND ORS. ETC

Petitioner(s)

VERSUS

STATE OF MAHARASHTRA AND ORS. ETC Respondent(s)
(With appln. For exem. From filing c/c of the impugned judgment and
exem. From filing O.T. and interim relief and office report)
Date : 09/03/2016 These petitions were called on for hearing today.
CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SHIVA KIRTI SINGH
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Petitioner(s) Mr. V.Giri, Sr. Adv.
Mr. P. V. Dinesh, Adv.
Ms. Sindhu T.P., Adv.

Mr. Bineesh K., Adv.
Mr. Rajendra Beniwal, Adv.
For Respondent(s) Mr. C.U.Singh, Sr. Adv.
Mr. R.P.Bhatt, Sr. Adv.
Mr. Chirag M. Shroff, Adv.

Mr. Bhaskar Das, Adv.
Mr. Rohit Kumar, Adv.
MR. Ashwin Reddy, Adv.
Mr. M.L.Verma, Sr. Adv.

Mr. Satya Mitra, Adv.
Mr. C.U.Singh, Sr. Adv.
Mr. Rajiv N.Narula, Adv.
Ms. Vandana Sehgal, Adv.
Mr. Rohan Thawani, Adv.
Mr. Anand Daga, Adv.

State of Mr. Shuvodeep Roy, Adv.
Maharashtra Mr. Nishant R.Katneshwar, Adv.

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

Leave granted.
The appeals are disposed of in terms of the signed order.
(Shashi Sareen) (Veena Khera)
AR-cum-PS Court Master
(Signed order is placed on the file)