

Supreme Court

JUSTICE K.M. JOSEPH, JUSTICE HRISHIKESH ROY

Mahanagar Telephone Nigam Ltd. (EAST-I) v. The Assistant Commissioner Bihanmumbai Mahanagarpalika and Ors.

CIVIL APPEAL NO. 6745 OF 2009

28th April 2022

Mumbai Municipal Corporation Act 1888 Section 297 , Mumbai Municipal Corporation Act 1888 Section 299 , Mumbai Municipal Corporation Act 1888 Section 488 , Mumbai Municipal Corporation Act 1888 , Indian Telegraph Act 1885 Section 4

Petitioner Counsel: Ms. Pinky Anand Ms. Rashmi Malhotra Respondent Counsel: Mr. Atul Y. Chitale Ms. Tanvi Kakar Mrs. Suchitra Atul Chitale

JUDGEMENT

K. M. JOSEPH, J.

1. The appellant challenges the judgment of the Division Bench of the High Court dismissing Writ Petition No. 791 of 2008 filed by it. The relief sought by the appellant is as follows:

“a) that this Hon’ble court may issue writ of certiorari or any other order, or direction writ, in the nature of writ of certiorari under Article 226 of the Constitution of India, for quashing and setting aside the said impugned Notices dated 27.9.2006 and 01.03.2008 issued by the Respondents under Section 299 and 488 of the Mumbai Municipal Corporation Act, 1888.”

2. Having regard to the nature of the order passed viz., essentially its length, we deem it apposite to refer to it:

“*Heard.*

2. The road line was fixed by the Municipal Corporation long back in the year 1988 by following the procedure under section 297 of the Bombay Municipal Corporation Act. Therefore, now the respondents have taken action under section 299 of the Bombay Municipal Corporation Act, for taking possession of the land.

3. The learned counsel for the petitioner states that the petitioner has already surrendered a portion of its land. However, the submission of the learned counsel for the Municipal Corporation, that it was for road widening. Now the land is being taken for curvature of VN Purav Marg and RC Marg.

4. We find that the Bombay Municipal Corporation has taken the right action. No interference is called for therein.

5. *The writ petition is rejected.*”

3. We have heard Ms. Pinky Anand, learned senior advocate, and also Ms. Rashmi Malhotra learned counsel, appearing on behalf of the appellant, as also, Mr. Atul Y. Chitale, learned senior counsel on behalf of the respondent.

4. Before we refer to the submissions of the parties, we may set out the facts as are necessary.

5. The predecessor in interest of the appellant viz., Bombay Telephones, received notice dated 14.03.1986 calling upon it to hand over the open set back land at Chembur Telephone Exchange Building for road widening purposes. There is a reference to detailed correspondence for some time and finally 387.5 square meters of area came to be surrendered. Nearly a decade thereafter, the appellant was served with notice dated 27.09.2006 under Section 299 of the Bombay Municipal Corporation Act, 1888 (hereinafter referred to as ‘Act’ for brevity). The said notice was for fresh proceedings for taking possession of land, admeasuring 308.37 square meters forming part of plot bearing CTS 1666 of Village Chembur, under Section 299 of the Act. The appellant replied by notice dated 17.11.2006. We may set out the terms of the notice:

“This has reference to the meeting held with you and our ED, (CGM (D), MTNL – Mumbai alongwith other senior Officers of MTNL, Mumbai on 16.11.2006 in Chembur on the subject mentioned above. In the above matter, it is mentioned that we have received your Notice dated 27.9.2006 issued under section 299 of the Mumbai Municipal Corporation Act 1888, You are also aware that the said notice is replied to, by our Deputy General Manager (Chambur) vide his letter dated 4.11.2006 by General Manager (East-I) vide his letter dated 20-10-2006. You are also aware that Executive Director of MTNL, vide his letter dated 30.10.2006 (copy enclosed) has requested Municipal Commissioner of MMC to re-examine the issue of your Notice dated 27.9.2006.

You will appreciate that as per the provisions of clause 2 of the section 299 of the said Act.

The said clause 2 of section 299 of MMC Act, 1888 reads as follows:

“Provided that when the land or building, is vested in the (Government) possession shall not be taken as aforesaid without the previous Sanction of the Government concerned and when, the land or building is vested in any corporation constituted by Royal Charter or by an act of Parliament, (of the United Kingdom), or (by an Indian law) possession shall not be taken as aforesaid without the previous sanction of (the State) Government”.

Please note that MTNL, is a Central Government established under the provisions of Section 4 of the Indian Telegraph Act, 1885. Considering the status of MTNL, being Central Government Corporation established under the law, you are not entitled to take the possession of the land or building vested in the Government without the previous sanction of the Government concerned i.e. Central Government, Ministry of Telecommunications.

It is further mentioned that the Chembur Telephone Exchange is serving more than 50,000

telephone connections and also that the set back land as required by already surrendered in the year 1995 as agreed with the BMC and accordingly the compound wall was shifted and re-constructed with minimum utility space for entry of the operational vehicles and security measures.

In view of the above and as discussed in the aforesaid meeting held at the site in Chembur, you are requested to the whole issue and reconsider the issue of surrender of any further set back land by MTNL as the spread land had already been surrendered by MTNL in the year 1995."

It is followed up by another communication dated 15.01.2008. We may again refer to the same:

"Asstt Commissioner M/West, BMC vide letter under reference has given notice for demolishing the boundary wall of Chembur Telephone Exchange latest by 15.01.2008 on failure of which as intimated by him, the same will be demolished by BMC on its own. In this connection, your attention is drawn to the following points

1) You will appreciate that the said installation under consideration is very important part of MTNL Mumbai network for telecommunication. In fact, Chembur Telephone Exchange has been identified as "vital installation" by Government of India and hence very important from national security point of view. Activities here are monitored by security agencies from time to time.

2. MTNL is a Central Government Corporation established under the provisions of Section 4 of the Indian Telegraph Act, 1885 and possession of the land and building or part thereof belonging to MTNL cannot be taken without prior sanction of the Government concerned i.e. Central Government.

3) It may be noted that Chembur Telephone Exchange is serving about 40,000 customers and any disorder will affect badly the service to these esteemed customers.

4) Too much proximity of the exchange equipments near the main road will subject these to continuous vibration/mechanical shock due to continuous movement of heavy vehicles on the road and will lead to their malfunctioning.

5) This being a technical building minimum vacant space in the campus is required for loading and unloading of equipments. Also, at such impotent technical installations we require to keep sufficient vacant space for movement of fire brigade in case of fire hazards.

6) The set back land as agreed by BMC was surrendered by MTNL in 1995 and accordingly the compound wall was constructed. At present there is shortage of utility space available in the said exchange campus. Any further reduction will adversely affect the working of the exchange as mentioned above.

In view of the above, you are requested to withdraw the claim for the said land and hence the notice under reference."

It is thereafter that the notice dated 01.03.2008 was issued, calling upon the appellant to surrender the land as demanded in the notice dated 27.09.2006. It is this notice which is impugned along with the notice dated 01.03.2008.

6. We have noticed all the facts and we have also referred to the impugned judgment.

7. Ms. Pinky Anand, learned senior advocate for the appellant, makes the following submissions. Firstly, it is contended that there was no compensation given by the respondents in respect of the earlier surrender effected by the appellant of 387.5 square meters. Secondly, it is contended that having regard to Section 299 of the Act, the impugned notices are unsustainable. According to the appellant, this is for the reason that in terms of Section 299(2), sanction has not been obtained from the Central Government before issuing the notice. It is further contended that there is a breach of Section 297 of the Act as the procedure contemplated under Section 297(1)(b) viz., issuance of a public notice for fixation of the road line was not carried out. Lastly, it is pointed out that the representation, or the objections of the appellant, was not considered.

We must also notice that the learned senior counsel would point out that there are important installations on the land in question which are vital for the effective functioning of the appellant-Corporation which caters to as many as 4000 subscribers.

8. Per contra, Shri Atul Y. Chitale, learned senior counsel for the respondents, would submit that the issue relating to the payment of compensation for the earlier surrender does not form the subject matter of the present writ petition. It is further submitted that under Section 301 of the Act, there is a procedure for the payment of compensation. It entails the filing of an application and the processing of the same and payment of compensation in terms thereof. As far as the violation of Section 299 for the absence of a sanction under Section 299(2) is concerned, it is pointed out that the appellant is not a statutory corporation. In regard to the third submission viz., that the fixation of the regular line of the street is violative of Section 297, the High Court by the impugned judgment has found that the line was fixed in the year 1988 after following the procedure.

9. As regards the question regarding the payment of compensation in regard to the surrender of 387.5 square meters in the year 1995-1996, we have noticed the relief which has been sought in the writ petition. We do not think that the appellant can introduce the said aspect for the purpose of impugning the notices in question. If the appellant has grievance in regard to the non-payment of compensation, and we must notice that there is not much material to show that the appellant has been pursuing the same, we cannot allow the notices, if they are otherwise found legal, to be impugned.

10. Regarding the second contention viz., violation of Section 299, that is with regard to whether there was no sanction from the Central Government, it becomes necessary to refer to Section 299. Section 299 of the Act reads as follows:

299. Acquisition of open land or of land occupied by platforms, etc. within the regular line of a street.

(1) If any land not vesting in the corporation, whether open or enclosed, lies within the regular line of a public street, and is not occupied by a building, or if a platform, verandah, step or some other structure external to a building abutting on a public street, or a portion of a platform, verandah, step or other such structure, is within the regular line of such street, the Commissioner may, after giving to the owner of the land or building not less than seven clear days written notice of his intention so to do, take possession on behalf of the corporation of the said land with its enclosing wall, hedge or fence, if any, or of the said platform, verandah, step or other such structure as aforesaid, or of the portion of the said platform, verandah, step or other such structure aforesaid which is within the regular line of the street, and, if necessary, clear the same and the land so acquired shall thenceforward be deemed a part of the public street.

Explanation. - For the purposes of acquisition of open land lying within the regular line of a public street, and not occupied by a building constructed before the 25th March, 1991 and occupied without obtaining the permission to occupy the building from the Commissioner under section 353A, 'owner' of the said land or building means a co-operative housing society or a federation of co-operative housing societies registered under the Maharashtra Co-operative Societies Act, 1960 or any condominium or a company incorporated under the Companies Act, 1956 with limited liability or an association of person or any ad hoc body formed by the occupants of the building.

(2) Provided that, when the land or building is vested in [the Government possession shall not be taken as aforesaid without the previous sanction of the Government concerned and, when the land or building is vested] in any corporation constituted by Royal Charter or by an Act of Parliament, [of the United Kingdom] or [by an Indian Law], possession shall not be taken as aforesaid without the previous sanction of [the State Government].

11. A perusal of Section 299 would show that what the provision provides can be stated as follows:

If the land which is what is referred to in sub section (1) is not vested in the corporation and it falls within the regular line and there is no building thereon, then possession can be taken as provided in sub section (1) without the previous sanction of the Government. Under the proviso, if the land or building is vested in the government then previous sanction of the government is necessary. It is not the appellant's case that there is a building. Also, the case of the appellant is that the land vests in the appellant. Appellant is a separate body and capable of owning the property. In fact, the learned senior counsel for the respondent would point out that the appellant is regarded as the owner in the property card. The second limb of the proviso deals with the situation where the land or building is vested in any corporation constituted by Royal Charter or by an Act of Parliament of the United Kingdom. That certainly is not the case of the appellant. However, possibly the case of the appellant can be that the appellant is a corporation constituted by an Indian law. If this is the case, where in other words, the appellant is a corporation constituted by an Indian law, which no doubt takes in a law made by Parliament, then indeed possession cannot be taken under section 299(1) without the previous sanction of the State Government. We are afraid that the appellant cannot be permitted to take shelter of this

limb as well. This is for the reason that the embargo is only against taking possession of the land and building vested in a corporation which is constituted by an Indian law. There is a world of difference between a corporate body owing its birth to a law and a body corporate which is created under the law. In fact, we notice from the statements in the special leave petition made by the appellant that the appellant was incorporated as a public limited company and registered under the Companies Act 1956. This cannot make it a corporation which is established by the law. This distinction is far too well known to require any reiteration with reference to case law.

12. As regards the third point, viz., that in the fixation of the regular line of the street within the meaning of Section 297 there was a prescription of the mandate in Section 297 (1)(b) to give public notice and a hearing, we may advert to Section 297:

297. Prescribing the regular line of a street.

(1) The Commissioner may: —

(a) prescribe a line on each side of any public street:

[Provided that in the case of any public street in the suburbs the regular line of a public street operative under any law in force in any part of the suburbs on the day immediately preceding the date of coming into force of the Bombay Municipal (Extension of Limits) Act, 1950, [and in the case of any public street in the extended suburbs the regular line of a public street operative under any part of the extended suburbs on the day immediately preceding the date of the coming into force of the Bombay Municipal [Further Extension of Limits and Schedule BBA (Amendment)] Act, 1956] shall be deemed to be a line prescribed by the Commissioner under this clause.]

(b) from time to time, but subject in each case to his receiving the authority of the corporation in that behalf, prescribe a fresh line in substitution for any line so prescribed, or for any part thereof provided that such authority shall not be accorded—

(i) unless, at least one month before the meeting of the corporation at which the matter is decided, public notice of the proposal has been given by the Commissioner by advertisement in local newspapers as well as in the [Official Gazette], and special notice thereof, signed by the Commissioner, has also been put up in the street or part of the street for which such fresh line is proposed to be prescribed, and

(ii) until the corporation have considered all objections to the said proposal made in writing and delivered at the office of the municipal secretary not less than three clear days before the day of such meeting.

(2) The line for the time being prescribed shall be called 'the regular line of the street'.

(3) No person shall construct any portion of any building within the regular line of the street except with the written permission of the Commissioner, who shall, in every case in which he gives such permission, at the same time report his reasons in writing to the [Standing

Committee].

It is no doubt true that the law commands that a public notice is to be given before the regular line of street is fixed. In fact, it is of greatest importance that the requirement in this regard be followed. This is for the reason that it brings about serious consequences for persons who would be affected in future by the fixation of the regular line of a street. In fact, invocation of the power under Section 299 is based on the existence of a regular line in a street. However, we must notice that the impugned judgment reflects that the High Court apparently was seized of the said aspect as it has found that the regular line was fixed in the year 1988 by following the procedure. We must at this point also bear in mind the fact that the appellant did surrender land consisting of 387.5 square meters based on the earlier demand and there was no case at that stage that the regular line was fixed without conforming to the mandate of Section 297. It is true that there is a ground taken in the writ petition and even in the special leave petition that Section 297 was not as such followed. The counter affidavit filed by the respondent in the High Court is not placed before us. No doubt, in the counter affidavit filed in this Court, there is no reference to this aspect. In the counter affidavit filed before this Court by the respondent, it has been, inter alia, stated as follows:

4. I state that the open set back land of other property owners also taken over under Section 299 of the Mumbai Municipal Corporation Act, 1888 and the land owners are entitled for compensation in terms of F.S.I. or T.D.R. as per the policy circular of these Respondents. I therefore, state and submit that as the adjoining setback land is already handed over and developed by these respondents, and only the road at petitioners' property could not be developed as the petitioner objected to the same. Hence these Respondents could not complete the work of road widening and the said road could not be put for public use at large. I therefore, state and submit that in the interest of public at large the petitioner be directed to handover the open set back to the respondent to enable the respondents to complete the project at the earliest. I therefore submit that the Special Leave Petition is devoid of any merits and the same be dismissed in the interest of public at large."

However, the appellant does not have a case that after the fixation of the regular line in the year 1988 as found by the High Court, there was a variation or change in the regular line and the same forms the basis for the impugned notices in the present case and we would therefore think that we cannot permit the appellant to succeed on the said point.

13. Lastly, it is contended that there has been no consideration of the objections of the appellant. It is pointed out that the appellant had contended that there are vital installations and any interference with the same would prejudice the rights of many subscribers, besides interrupting the operations of the appellant. We must in this context bear in mind that the issue raised in this case relates to the powers of the municipal body to maintain the regular street line which, in turn, is put in place to secure the highest public interest. The city with which we are dealing with viz., Mumbai has been plagued with the problem of traffic jams leading to serious inroads into public interest under various heads. The common man is the most adversely affected in particular, if there is no respect paid to

the regular line of the street. Therefore, this is an action on the part of the respondent which we cannot interfere with lightly. The area in question appears to be a junction viz., Chembur junction which appears to be in particular congested. In fact, the respondent has a case that to some extent they have been able to clear the road. They have also a case that even in regard to the Indian Navy, land has been taken over and they wish to have a policy which will not discriminate on any basis.

14. The argument which we must notice is that the appellant would point out that there is a structure within the meaning of Section 299(1) and it should be an obstacle for the impugned order to be passed. We must point out that this argument again may not succeed. What Section 299(1) contemplates is a foundational test for taking over the land which is - if the land, not vesting in the corporation, whether open or enclosed, lies within the regular line of public street and is not occupied by a building. This is one part of Section 299. Therefore, the embargo is against invoking Section 299 in the situation where the land is occupied by a building. This is subject to the proviso which we have adverted to. It is not the case of the appellant that the land with which we are concerned is occupied by a building. However, an attempt is made to contend that it is the latter part of sub-section (1) which may be attracted. This is for the reason that the latter limb of sub section (1) declares that if a platform, verandah, step or some other structure external to a building abutting on a public street or a portion of a platform, verandah, step or other such structure is within the regular line of such street, the Commissioner may take action in the manner provided therein. The structures which are referred to in the aforesaid second limb are structures over which the corporation is clothed with power in fact to take action. Therefore, we see no merit in the said argument as well.

15. Having noticed that the appellant has not been able to convince the Court to interfere with the matter, the impugned judgment is sustained. We are undoubtedly troubled by the fact that the appellant which is also a public body has a complaint about compensation due to it for the surrender of the earlier land not being disbursed. We would think that the powers of this Court must be exercised in this regard though it is true that there is no relief sought as such in the writ petition. Accordingly, we pass the following order:

(a) We dismiss the appeal and confirm the dismissal of the writ petition filed by the appellant.

(b) However, we direct that in case, the appellant has not been paid the compensation already due to it for the earlier surrender of 387.5 square meters area and if the appellant has already not made any application under Section 301, if the appellant makes an application within a period of one month from today, the said application will be processed and taken to its logical conclusion in this regard.

The compensation will be processed in accordance with law which shall be made available to the appellant within a period of four months from the date of the filing of the application.

No orders as to costs.