

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO..... OF 2023

(SPECIAL LEAVE PETITION (C) NO. 4441 OF 2020)

**JAFFAR ALI NAWAB ALI
CHAUDHARI AND OTHERS**

... Appellant(s)

VERSUS

**THE MUNICIPAL CORPORATION OF
GREATER MUMBAI**

... Respondent(s)

J U D G M E N T

RAJESH BINDAL, J.

1. Leave granted.
2. The short issue which requires consideration by this Court in the present appeal is regarding rights of the appellants for consideration of their claim either for allotment of an alternative site or compensation for the premises in their use and occupation.

3. The undisputed fact which remains on record is that the appellants were found to be in possession of the property in dispute from the year 1976 onwards. It was even assessed to tax by the Municipal Corporation. The litigation started with the issuance of notice dated 20.02.2001 under Section 314 read with Section 394 of the Mumbai Municipal Corporation Act, 1888 to Nawab Ali Suleman, predecessor-in-interest of the appellants. The same was challenged by filing a Civil Suit¹, which was decreed on 27.03.2003 restraining the Corporation from taking any action against the occupants in pursuance of notice dated 20.02.2001. Subsequent thereto, fresh notices dated 17.01.2004 and 22.06.2007 were issued to the predecessor-in-interest of the appellant under Section 89 read with Section 165 of the Act². Earlier notice was replied to on 22.01.2004. However, still without considering the reply filed by stand taken by the predecessor-in-interest of the appellants in pursuance to notice dated 17.01.2004, an order was passed on 25.06.2007 under Section 89 of the Act calling upon him to surrender possession of the plot. The same was challenged by filing the Civil Suit³. During the pendency of the aforesaid suit,

¹ Suit No. 1226 of 2001

² The Maharashtra Regional and Town Planning Act, 1966

³ Suit No. 2608 of 2007

Nawab Ali died, and the appellants were brought on record as his legal representatives. The suit was decreed by the Trial Court on 29.09.2011 holding notices dated 17.01.2004 and 22.06.2007 and order dated 25.06.2007 illegal. The respondent being aggrieved against the judgment and decree of the Trial Court preferred appeal before the High Court⁴. The appeal was accepted by the High Court. The aforesaid judgment and decree of the High Court is impugned in the present appeal.

4. The short argument raised by learned counsel for the appellants is that in terms of the Town Planning Scheme, as notified on 01.08.1994 and the subsequent circulars issued by the Corporation⁵ from time to time, the appellants who are in possession of the property in dispute are entitled to be rehabilitated or paid compensation. The genuine claim of the appellants is not being considered though undisputedly they were found to be in possession of the property in dispute from the year 1976 onwards.

5. The claim of the appellants is sought to be refuted by learned senior counsel for the Corporation on the plea that the suit filed

⁴ First Appeal No. 686 of 2018, High Court of Judicature at Bombay

⁵ Municipal Corporation of Greater Mumbai

by the appellants was not maintainable in view of bar as contained in Section 149 of the Act. There is no error in the order passed by the High Court. The claim of the appellants is highly belated and may open a pandora box.

6. After hearing learned counsel for the parties, in our view, the present appeal deserves to be allowed without going into much details for the reason that admittedly, the appellants were found to be in possession of the property in dispute from the year 1976 onwards as per census certificate dated 24.05.1978. In terms of the Town Planning Scheme, notified on 01.08.1994 and subsequent circulars, the claim of any occupant of the property is required to be considered for rehabilitation or for payment of compensation. The appellants are still in possession of the property, which is stated to be coming in the alignment of 60 feet T.D. Road. The only prayer of the appellants is that their claim for rehabilitation or payment of compensation be considered in terms of the Town Planning Scheme. The same has not been considered.

7. Instead of relegating the parties to litigate further, in our view, the present appeal can be disposed of with a direction to the Corporation to consider the claim of the appellants in terms of the Town

Planning Scheme either for rehabilitation or payment of compensation.

The needful shall be done within a period of three months from the date of receipt of copy of the order.

8. The appeal is accordingly allowed while setting aside the impugned order passed by the High Court.

.....J
(VIKRAM NATH)

.....J
(RAJESH BINDAL)

New Delhi
November 06, 2023.