
(2006) 01 BOM CK 0018

In the Bombay High Court

Case No : Public Interest Litigation No. 105 of 2003

Hari Hotumal Tanwani

APPELLANT

Vs

Commissioner, Ulhasnagar Municipal Corporation and Others

RESPONDENT

Date of Decision : 25-01-2006

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 2, 3, 3(4), 3(5)
Constitution of India, 1950 — Article 14
Maharashtra Regional and Town Planning Act, 1966 — Section 124B
Ulhasnagar Regularisation of Unauthorised Developments Ordinance, 2006 — Section 4, 4(2), 4(3), 4(4)
Urban Land (Ceiling and Regulation) Act, 1976 — Section 20

Citation : (2006) 2 BomCR 487

Hon'ble Judges : Mohta Anoop V., J; Lodha R.M., J

Bench : Division Bench

Advocate : Aspi Chinoy and Shiraz Rustomjee, Amicus Curiae, H.H. Tanwani, Party in Person, S.B. Jaisinghani and N.N. Shimpi, in No. C.A. Nos. 4 and 5 of 2006, K.K. Singhvi, P.K. Dhake phalkar, N.N. Shimpi and Jaydeep Deo, in C.A. No. 8 of 2006 and V.A. Thorat and Vinod Tayade, in C.A. No. 7 of 2006, for the Appellant; C.J. Sawant and V.D. Patil, for respondent No. 1, Ravi M. Kadam, A.G. S.R. Nargolkar, AGP for respondent Nos. 2 and 3, for the Respondent

Judgement

1. Subsequent to the order dated 12th January, 2006 that was passed by us, the Maharashtra Ordinance No. I of 2006 has been gazetted in the Government Gazette on 14th January, 2006 to regularise unauthorised development in the City of Ulhasnagar and for matters connected therewith or incidental thereto.

2. The Statement of Objects that led to promulgation of the Ordinance is thus:

Ulhasnagar is primarily a city of refugees or displaced persons who were rehabilitated after migration from West Pakistan in the aftermath of partition. The township was originally a military transit camp built up by the then British Government in 1942 during the Second World War to house 6000 British soldiers. There were 1173 barracks available and 94,400 persons migrated from West

Pakistan were accommodated there. Many remained without a roof over their head. Many occupied vacant land and put up their shelters. Pangs of partition and displacement was audible from packet barracks and unorganised shanties set up on open lands.

2. The Municipal Council of Ulhasnagar was set up in 1960. The Development Control Regulations for this Town were published in 1974. The Floor Space Index allowed was 1,00. In the Development Plan prepared by the Mumbai Metropolitan Region Development Authority for the City of Ulhasnagar, it is observed that the population of 4,73,000 is spread over an existing residential area of 7 square kilometers (density of 700 persons per hectare).

3. Population explosion and limited areas with limited Floor Space Index, greedy and unscrupulous builders and negligent local administration, have brought to the City the large scale illegal construction. These were brought to the notice of the Hon''ble High Court through different Public Interest Litigations (PIL) and the Hon''ble High Court has ordered that illegal constructions need to be demolished. They ought to go. However, demolition on such a large scale may lead to law and order problem and hardship to residents and a large number of them would be reordered homeless and it is not possible to provide them with alternative accommodation. This will virtually lead to the second displacement of the persons migrated from West Pakistan, requiring rehabilitation which Government can hardly afford.

4. The issue was discussed in the last Winter Session of the State Legislature and the representatives of the people urged the Government to come with some solution to mitigate miseries of occupants of the authorised structures in the City of Ulhasnagar.

5. The Government, therefore, considers it expedient to make a special law providing for regularisation of the unauthorised constructions in the City of Ulhasnagar on the lines of the Gujarat Regularisation of Unauthorised Development Act, 2001 (Guj. Act No.23 of 2001).

6. The Ordinance inter alia provides for,

(i) regularisation by the Designated Authority of unauthorised development (other than the unauthorised development on lands under alignment of existing public roads or an internal road of an approved layout, water courses and water bodies, natural drainage, etc. and areas earmarked for the purpose of obnoxious and hazardous industrial development) in the City of Ulhasnagar made upto the 1st January 2005 and upto 4 Floor Space Index (F.S.I.) in payment of the compounding fees and development charges on the basis of the category of development;

(ii) appointment of expert committee consisting of three persons, who have knowledge of and experience in structural engineering, fire fighting and town planning, to advise the Designated Authority about the fire safety measures and

structural stability requirements;

(iii) regularisation of the unauthorised development in respect of margins and setbacks, covered projection, change of use, height of buildings and parking deficiency, etc.;

(iv) appeal by the person aggrieved by the order or decision of the Designated Authority;

(v) Constitution of Infrastructure Development Fund.

3. The Ordinance entitled "Regularisation of Unauthorised Developments in the City of Ulhasnagar, 2006" has come in to effect on 14th January, 2006. We deem it fit to reproduce the Ordinance as it is.

1. (1) This Ordinance may be called the Regularisation of Unauthorised Developments in the City of Ulhasnagar Ordinance, 2006.

(2) It shall come into force at once.

2. (1) In this Ordinance, unless the context requires otherwise, -

(a) "Commissioner" shall have the meaning assigned to it in Clause (9) of Section 2 of the Bombay Provincial Municipal Corporation Act, 1949;

(b) "Designated Authority" means the Designated Authority appointed under Sub-section (5) of Section 3;

(c) "prescribed" means prescribed by Rules made under the Ordinance;

(d) "unauthorised development" means the development carried out without obtaining the permission of the authority competent to give such permission or in contravention of the permission.

(2) Words and expressions used but not defined herein shall have the respective meanings assigned to them in the Maharashtra Regional and Town Planning Act, 1966, or the Bombay Provincial Municipal Corporation Act, 1949.

3. (1) Notwithstanding anything contained in the Maharashtra Regional and Town Planning Act, 1966 or the Bombay Provincial Municipal Corporations Act, 1949 or any rules, regulations or bye-laws made thereunder (hereinafter referred to as "the relevant law"), unauthorised developments carried out in the City of Ulhasnagar before 1 st January 2005, shall be regularised in accordance with the provisions of this Ordinance.

(2)(a) A notice issued to a person under the relevant law at any time before the 1st January 2005, requiring such person to remove, pull down or alter unauthorised development carried out, owned or occupied by him; or

(b) any order issued or decision taken under the relevant law at any time before the date of publication of the Regularisation of Unauthorised Development in the City of Ulhasnagar Ordinance, 2006, in the Official Gazette, directing removal,

pulling down or alteration of unauthorised development carried out or discontinuance of any use of land or building owned or occupied by a person, shall, unless and until such notice, order or decision stands revived under Sub-section (7), be deemed to have stood suspended on the date of publication of the Regularisation of Unauthorised Developments in the City of Ulhasnagar Ordinance, 2006, in the Official Gazette.

(3)(a) Notwithstanding anything contained in the relevant law or in the order issued or the decision taken under such law, directing removal, pulling down or alteration or unauthorised development, or discontinuance of any use of land or building, the Designated Authority, either on the basis of information available with it or on an application made to it, is of the opinion that, unauthorised development carried out in the City of Ulhasnagar before the 1st January 2005 may, having regard to the provisions of Section 4, be regularised, it may, within such period and in such manner as may be prescribed, serve on such person a notice requiring him within such period not being less than a month as may be specified therein to comply with requisitions made u/s 4 and to deposit the compounding fees determined in accordance with the Table below and the development charges leviable u/s 124-B of the Maharashtra Regional and Town Planning Act, 1966.

(b) The Designated Authority shall, as soon as may be, after service of notice to a person under Clause (a), cause the substance thereof to be published for the information of the general public, in such manner, as may be prescribed.

(4)(a) Upon the compliance of requisitions made u/s 4 and on the payment of compounding fees and development charges under Sub-section (3), such development shall cease to be unauthorised and the Designated Authority shall issue a certificate to that effect. If the Designated Authority decides not to regularise the unauthorised development, the decision shall be communicated to the person concerned.

(b)(i) The Designated Authority shall constitute a committee of experts, consisting of three persons who, in the opinion of the Designated Authority, have knowledge of, and experience in, structural engineering, fire fighting and town planning, respectively.

(ii) the Designated Authority shall, before receiving the fees and the development charges and issuing the certificate under Clause (a), consult the committee constituted under Sub-clause (i), on the question as to whether the person has complied with the fire safety measures and structural stability requirements, as per the National Building Code and the Indian Standard Specifications for the time being in force; and it shall be the duty of the committee to advise the Designated Authority on the question so referred;

(iii) the Committee shall follow such procedure for disposal of the business as may be determined by the Designated Authority.

(5) The State Government may, by notification in the Official Gazette, appoint commissioner or an officer not below the rank of Deputy Secretary to Government to be the Designated Authority, for the purposes of exercising the powers and discharging the duties under this Ordinance. The Designated Authority shall receive such Ulhasnagar Municipal Corporation, as the State Government may, from time to time, determine.

(6) Any amount deposited by a person with the Ulhasnagar Municipal Corporation against unauthorised development shall be set-off against the fees to be paid by him under Sub-section (4).

(7) Where no notice is served upon a person under Sub-section (3) within the period prescribed under that Sub-section or where a notice is served upon a person under Sub-section (3) but a certificate is not obtained by him under Sub-section (4) within such period as may be specified the notice, order or, as the case may be, the decision referred to in Sub-section (2) shall stand revived.

4. (1) An unauthorised development shall not be regularised under Sub-section (3) of Section 3, if it is carried out on, -

(i) land under alignment of existing public roads or an internal road, of approved layout;

(ii) water courses and water bodies like tank beds, river beds, natural drainage and such other places; and

(iii) areas earmarked for the purpose of obnoxious and hazardous industrial development.

(2) Unauthorised development may not be regularised if it is inconsistent with, -

(a) fire safety measures under the relevant law; and

(b) structural stability "requirements as per the National Building Code and the Indian Standard Specifications (prescribed by the Bureau of Indian Standards) for the time being in force;

Provided that, if the applicant furnishes to the Designated Authority, a certificate from the Chief Fire Officer of the Municipal Corporation of the City of Ulhasnagar or the structural engineer authorised by it certifying compliance of provisions of Clause (a) or (b), as the case may be, unauthorised development may be regularised.

(3)(a) The Designated Authority may regularise any unauthorised development in respect of the following matters, namely -

(i) Margins and setbacks;

(ii) Floor Space Index (F.S.I.);

(iii) Covered projection;

- (iv) Change of use;
- (v) A common plot and a consolidated open plot;
- (vi) Height of a building;
- (vii) Parking deficiency;

Provided that, the Designated Authority shall not regularise unauthorised developments having Floor Space Index (F.S.I.) more than 4,00 and projections beyond plot boundary and the change of use which in the opinion of the Designated Authority may cause danger to health or lead to hazard;

(b) The Designated Authority may regularise any unauthorized development, is so far as sanitary facilities are concerned on providing necessary sanitary facilities by the applicant, as may be directed by the Designated Authority.

(4) Notwithstanding anything contained in Clause (b) of Sub-section (2), the Designated Authority may, for the purpose of regularization ,direct making of provisions in the unauthorised development as follows, namely :-

(a) in the case of buildings with 100 per cent built-up area with no space for water storage tank and installation of fire pumps and no provision of alternate means of escape or no provision for fixed fire fighting installations, the Designated Authority may, in consultation with the Chief Fire Officer of the Municipal Corporation of Ulhasnagar, direct the person to provide such fire safety measures as may be specified in the direction within a period of three months from the date of such directions;

(b) in the case of buildings where no space is available within the complex in which they are situated for the construction of underground water storage tank and installation of fire pumps but adequate means of escape are available, the Designated Authority may direct the person to provide common underground water storage tank and fire pumps in such complex at suitable location within a period of three months from the date of direction;

(c) in the case of high rise buildings having height of fifteen meters or exceeding fifteen meters, the Designated Authority may permit a person to install diesel generating set instead of electric supply to the main fire pump within a period of three months.

5. 5.(1) Notwithstanding anything contained in any other law for the time being in force, the unauthorised development on being regularised, shall be deemed to have been exempted u/s 20 or the Urban Land (Ceiling and Regulation) Act, 1976 from the provisions of Chapter III of the said Act, the Government land under encroachment shall be deemed to have been transferred in favour of encroachers, subject to the payment of price of land, as may be determined by the Collector of District of Thane, and stand converted to non-agricultural use for all purposes of the Maharashtra Land Revenue Code, 1966, subject to the payment of non-agricultural assessment and the other statutory terms and

conditions, if any, of such conversion and the provisions of the Development Plan or the Regional Plan, as the case may be, shall so far as such development is concerned, stand modified or relaxed, to the extent of regularisation.

(2) On such regularisation of unauthorised development u/s 3, all court cases or other proceedings, filed by the Municipal Corporation of the City of Ulhasnagar and pending in any court in so far as they relate to such unauthorised development, shall abate.

6. 6.(1) Any person aggrieved by the order or decision of the Designated Authority under Clause (a) of Sub-section (4) of Section 3 may, within thirty days from the date of the receipt of the order, prefer an appeal to an Appellate Officer, who shall be a person who has held the office of Judge of a District Court or Secretary to the Government of Maharashtra, for a period not less than one year and appointed in this behalf by the State Government:

Provided that, the Appellate Officer may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under Sub-section (1), the Appellate Officer may, after giving the appellant an opportunity of being heard, pass an order confirming, modifying or cancelling the order appealed against.

(3) The decision of the Appellate Authority shall be final and shall not be questioned in any Court of law.

(4) No appeal under this section by an aggrieved person shall be entertained by the Appellate Officer unless it is accompanied by Court fee stamp of one hundred rupees.

(5) The Appellate Officer shall receive from the Municipal Fund of the Ulhasnagar Municipal Corporation, such monthly salary and allowances as the State Government may determine from time to time.

7. Subject to the rules made under this Ordinance, all fees received under this Ordinance shall be credited to a fund which shall be called the Infrastructure Development Fund and which shall be held by the Designated Authority in trust for the purpose of augmentation, improvement or creation of an infrastructure facility.

8. 8.(1) No suit, prosecution or other legal proceedings shall lie against any officer or authority for anything which is in good faith done or intended to be done in pursuance of this Ordinance or any rules made thereunder.

(2) No suit or other legal proceedings shall lie against the State Government or any officer or authority for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Ordinance or any rules made thereunder.

9. For the removal of doubt, it is hereby declared that regularisation of unauthorised development under this Ordinance shall be without prejudice to any civil or the criminal liability to which a person may be subject to under any other law for the time being in force.

10.10.(I) The State Government may issue, from time to time, directions to the Ulhasnagar Municipal Corporation as it may deem fit for giving effect to the provisions of this Ordinance and it shall be the duty of the Corporation to comply with such directions.

(2) If in, or in connection with, the exercise of its powers and discharge of its functions by the Designated Authority under this Ordinance dispute arises between the Designated Authority and the Ulhasnagar Municipal Corporation, the dispute shall be referred to the State Government and the decision of the State Government thereon shall be final.

11. 11.(I) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Ordinance.

(2) Except when the rules are made for the first time, all rules made under this Ordinance shall be subject to the condition of previous publication.

(3) In particular and without prejudice to the generality of the foregoing provisions, such rules may provide for all or any of the following matters, namely:

(i) the period within which and the manner in which a notice shall be served under Sub-section (3) of Section 3 and the manner of publication of substance of notice under Clause (b) of that Sub-section;

(ii) any other matter, which is to be prescribed.

(4) Every Rule made under this Ordinance shall be laid, as soon as may be, after it is made, before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session in which it is so laid or the session or sessions immediately following, both Houses agree in making any modification or both Houses agree that the rule should not be made, and notify such decision in the Official Gazette, the rule shall, from the date of publication of such notification, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

4. As per the Ordinance the unauthorised developments upto 1st January, 2005 are entitled to be regularised, except those mentioned in Section 4 of the said Ordinance. The Ordinance provides for the procedure for regularisation and the designated authority is entrusted with the said function. The Collector of Thane is reported to be appointed as designated authority.

5. The constitutionality of the Ordinance has not been challenged so far. Though

the Ordinance raises vital issues as to whether the special treatment authorised by the Ordinance to the unauthorised construction in Ulhasnagar renders nugatory the efficacy of urban laws and the urban policy applicable to other parts of the State ? Can the urban development laws differentiate between citizens who were once displaced and rehabilitated and others and is the State entitled to discriminate on such ground? Whether the special class created by the Ordinance violates the equality before law or the equal protection of laws enshrined in Article 14 of the Constitution of India?

6. Mr. Aspi Chinoy, the learned senior counsel and amicus curiae submitted that the Ordinance ratifies rampant illegalities and is contrary to rule of law, but submitted that until the constitutionality of the Ordinance is put in issue, this Court must presume that the Ordinance is constitutional and the classification reasonable.

7. Alongwith the Affidavit filed by Shri Nanasaheb B, Patil, Principal Secretary, Urban Development Department, Mantralaya, the letter dated 20th January, 2006 addressed by the Government of Maharashtra to the Municipal Commissioner, Ulhasnagar Municipal Corporation has been annexed wherein it is recorded that Regularisation of Unauthorised Developments in the City of Ulhasnagar Ordinance, 2006 provides an opportunity to the concerned people to approach the designated authority for getting their unauthorised structures regularised and as far as 855 structures are concerned, the Hon'ble High Court order is very clear and the Commissioner is expected to implement it in letter and spirit; the aggrieved parties may approach the Hon'ble High Court for appropriate relief. Mr. Aspi Chinoy, the learned senior counsel submitted that in the light of the Ordinance No. I of 2006 the basis of the order dated 27th April, 2005 has been sought to be knocked off and it shall not be proper to proceed with the implementation of the order dated 27th April, 2005.

8. Few individual applications have also been made praying therein that the order dated 27th April, 2005 be recalled or modified in the light of the promulgation of Maharashtra Ordinance No. I of 2006 and liberty may be granted to such applicants to apply for regularisation of the buildings which have been found to be unauthorised by the Corporation.

9. Mr. K.K. Singhvi, Mr. V.A. Thorat and Mr. Jaisinghani, the learned senior counsel who appeared for the applicants submitted that the order passed by this Court on 27th April, 2005 has been rendered ineffective on promulgation of Maharashtra Ordinance No. I of 2006 and the applications deserve to be granted.

10. The learned Advocate General made the categorical statement before us that by the Ordinance promulgated on 14th January, 2006, the order passed by this Court on 27th April, 2005 is not overturned, but basis of the order i.e. the notices issued to the persons under the relevant law before 1st January, 2005 or the orders issued or decisions taken under the relevant law have been suspended until the exercise as contemplated under the Ordinance by the designated

authority is completed.

11. We reflected over the submissions made by the learned senior counsel appearing as *amicus curiae*, the learned Advocate General and the learned senior counsel appearing for the parties and carefully perused Maharashtra Ordinance No. I of 2006. Presently, constitutionality of the said Ordinance is not in issue before us. Now since the Governor has promulgated the Ordinance by which unauthorised development in the City of Ulhasnagar upto 1st January, 2005 is entitled to be regularised, save and except those unauthorised development mentioned in Section 4 of the said Ordinance and the designated authority has been entrusted with the said function, we are of the view that the implementation of the order dated 27th April, 2005 and the subsequent orders insofar as demolition of unauthorised constructions are concerned deserve to be deferred and we order accordingly.

12. The learned Advocate General made the statement before us that the designated authority shall be in a position to complete the exercise contemplated by the Ordinance in a period between eighteen months to two years. In the circumstances, we are of the view that this Petition may be presently adjourned for a period of eighteen months.

13. As regards the action against the erring builders/developers/landlords/architects whose names find place in Exhibit-5 (pages 673 to 684A) Exhibit-6 (pages 685 to 698) and Exhibit-7 (pages 689 to 702), in the Affidavit filed by Mr. D.S. Patil, Commissioner of Ulhasnagar Municipal Corporation, it is stated that the list of erring builders/developers/landlords/ architects is lengthy and it would take some more time to verify the old record before necessary action is taken. He has stated that he has already written to the various Police Stations in that regard and he has also received some information from the Police Stations and upon receipt of entire information, necessary action shall be taken. We direct the Commissioner of Ulhasnagar Municipal Corporation to initiate action against erring builders/ developers/landlords/ architects expeditiously and the process be taken to logical conclusion.

14. As regards the action pursuant to the Nandlal Committee Report, we direct the State Government to take all necessary steps for implementation of its recommendation which has been accepted, including the enactment of law for disqualification of the councillors if they were found involved in indecent behaviour and misconduct.

15. Let the Writ Petition be posted before the Court after eighteen (18) months.