

(1996) 11 BOM CK 0022

In the Bombay High Court

Case No : Writ Petition No. 1560 of 1989

Jayant Vegoils and Chemicals (P) Ltd. and Another

APPELLANT

Vs

The City and Industrial Development Corporation of
Maharashtra Ltd.

RESPONDENT

Date of Decision : 06-11-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Evidence Act, 1872 — Section 115

Maharashtra Regional and Town Planning Act, 1966 — Section 108, 109

New Bombay Land Disposal Regulations, 1975 — Regulation 7

Citation : (1997) 2 BomCR 600 : (1997) 2 MhLj 617

Hon'ble Judges : S.S. Nijjar, J;N.D. Vyas, J

Bench : Division Bench

Advocate : Rajani Iyer and Priya Smart, instructed by Wadia Ghandy and Co, for the Appellant; C.J. Sawant, General and R.M. Sawant, for the Respondent

Final Decision : Dismissed

Judgement

N.D. Vyas, J.—By the present petition under Article 226 of the Constitution of India, the Petitioners are challenging the validity and legality of the action on the part of the Respondents in demanding and recovering a sum of Rs. 9,42,000/- from the Petitioners. The Petitioners have further prayed for a suitable order directing the respondents to withdraw and/or cancel their letters dated 19th January 1988 and 11th May, 1988 impugned in the petition and to refund the amount of Rs. 9,42,000/- with interest. Briefly stated the facts giving rise to the present petition are as follows.

2. By an application dated 17th January 1981, the Petitioner No. 1 requested the Respondents to grant a lease to them of a plot of land in Sector 17 in Vashi, New Bombay, admeasuring about 1,850 sq. mtrs. The Respondents is a Government Company, incorporated under the provisions of the Companies Act and have been designated as the New Town Development Authority of the new town of New Bombay under the provisions of Maharashtra Regional and Town Planning Act,

1966. Pursuant to the Petitioner's said application, an agreement to lease was executed between the parties on 22nd October 1981. Under the said agreement, the Petitioners were required to commence the construction work within six months and to complete the same within a period of two years from the date of the agreement. Clause 6 thereof provided for extension of time inter alia on the condition that the same would be done as per provisions of New Bombay Disposal of Lands Regulations, 1975 (the said Regulations for short). The Petitioners were put in possession of the said plot on 22nd October, 1981. It is the Petitioners' case that they commenced construction work within the stipulated period, however, for various reasons entirely beyond their control and difficulties faced by them, the same could not be completed within two years i.e. by 21st October, 1983 as stipulated under the said agreement. It is the Petitioners' case that the Petitioners and other such builders were granted extension of 16 months i.e. till 21st February, 1985 but no premium was charged as according to the Petitioners, the Managing Director of the Respondents realised that non-completion of the construction work was due to the failure of the Respondents to supply proper infrastructure. Even during the extended time, the construction could not be completed and therefore, the Petitioners accordingly applied for first extension on 23rd August 1985. By letter dated 14th October, 1985 addressed by the Respondents, the Petitioners were asked to pay 5% of the premium amounting to Rs. 55,500/- in terms of clause 6 of the agreement to lease. The said amount was paid by the Petitioners and time for completion was extended from 22nd October, 1985 to 21st February, 1986. Again on 11th June 1986, the Petitioners sought further extension as the construction could not be completed by 21st February, 1986. The second extension was thus granted by the Respondents for a period upto 20th February, 1987 subject to the Petitioners paying an additional premium of Rs. 1,11,000/- i.e. 10% of the lease premium. This amount was also paid by the Petitioners. It is the Petitioners' case in the petition that by the end of January 1987, the construction work was completed and that all structural work was done in accordance with the licence and plans approved by the Respondents. However, the work relating to lift and fire fighting equipment was required to be done. The Petitioners, applied for part occupation certificate for ground floor. This application was dated 4th February 1987 alongwith which necessary certificate dated 30th January 1987 of Petitioner's Architect was also sent to the Respondents. The Petitioners completed the remaining work and obtained their Architect's completion certificate dated 10th December 1987. With reference to the said certificate, the Respondents by its letter dated 19th January 1988 informed the Petitioners that the work had not been completed within the extended time i.e. 20th February 1987 and asked the Petitioner to apply for extension. The Respondents also informed the Petitioners that their case would be processed further only after the grant of extension of time limit. The Petitioners by their Architect's letter dated 8th February 1988 informed the Additional Town Planning Officer of the Respondents that in their application dated 4th February 1987 they have specifically mentioned that the infrastructure and the entire work of the upper

floors of the building was also completed except lift and installation of fire fighting equipment and that there was no question of applying for extension of time limit as insisted by the Respondents. On 8th March 1988, the Petitioners were informed by the Respondents that the Petitioners' application for waiver could not be considered and they were directed to comply with the Respondents' said letter dated 19th January 1988 (impugned letter) and that they were also informed that the Petitioner's case for occupancy would be processed only after the compliance of the said letter. The Petitioners were further informed by letter dated 11th May 1988 (impugned letter) that while granting extension of 4th and 5th years, the Petitioners had paid additional lease premium at the rate of 15% only; that it was necessary to recover it at the rate of 60% as per revised rules and that therefore, balance amount of Rs. 4,97,500/- was required to be paid by the Petitioners in the first instance; that since the date of full completion was beyond the extended period, further extension of the 6th year was required to be granted for which the Petitioners were required to pay additional premium at the rate of 40% i.e. Rs. 4,44,000/-. Thus, the Petitioners were called upon to pay the aggregate amount of Rs. 9,43,500/- and the Petitioners were informed that their case for occupancy would be processed only after grant of extension. This was followed by a detailed letter by the Petitioners dated 23rd May 1988 disputing the said demand. Further correspondence took place between the parties and it appears that the total amount of Rs. 9,43,000/- was paid under protest. By the present petition as set out at the outset in effect the Petitioners are challenging the recovery of the amount of Rs. 9,43,000/-.

3. In order to appreciate the contentions raised by the parties before us, it would be advantageous to reproduce certain relevant clauses of the agreement for lease dated 22nd October 1981:-

"3(d) That he/they/it shall be within a period of six months from the date hereof commence and within a period of two years from the date hereof at his/their/its own expense and in a substantial and workman-like manner and with new and sound materials and in compliance with the said Development Control Regulations and any other law for the time being in force and in strict accordance with the approved plans, elevations, sections, specifications and details to the satisfaction of the Town Planning Officer and conformably)to the building lines marked on the plan and completely finish fit for occupation building to be used as residential building with all requisite drains and other proper conveniences thereto Rates and Taxes.

(e) That he/they/it will pay all rates, taxes, charges, claims and outgoing chargeable against an owner or occupier in respect of the said land and any building erected thereon Payment of Service Charges.

(f) That he/they/it will on the efflux of 2 years from the date hereof or from the date of obtaining a Completion and Occupancy Certificate from the Corporation whichever is earlier, make to the Corporation a yearly payment at a rate as may be determined and notified from time to time by the Corporation as his/their/its

construction to the cost of establishing and maintaining civic amenities such as roads, water, drainage, conservancy for the said land regardless of the extent of benefit derived by him/them/it from such amenities. Provided that no payment shall be made one year after such civic amenities have been transferred to a local authority constituted under any law for the time being in force. The payment hereunder shall be paid on the first day of April in each year or within 30 days there from Extension of time.

6. Notwithstanding any such default as aforesaid the managing director may in his discretion give notice to the licensee of his intention to enforce the licensee's agreement herein contained or may fix any extended period for the completion of the building and the works for the said period mentioned in clause 3(d) above, if he is satisfied that the building and works could not be completed within the prescribed time for reasons beyond the control of the licensee and if the licensee shall agree to pay additional premium at the scale provided by Regulation No. 7 of New Bombay Disposal of Lands Regulations 1975 made by the Corporation under the provisions of the said Act and thereupon the obligations hereunder of the licensee to complete the building and to accept a lease shall be taken to refer to such extended period."

4. It is also necessary to reproduce Regulation No. 7 of the said Regulations as it stood at the time of execution of the agreement for sale which is as follows:-

"7. Permission for extension of time:---The Managing Director may in his discretion permit extension of time prescribed for the completion of building, factory, structure on other work on payment of additional premium at the following rates:-

5. The said Regulation 7 was amended in 1983 and the amended Regulation is reproduced below:-

"7. Permission for extension of time:-

If the intending lessee obtains development permission and commences construction in accordance with the conditions of agreement to lease made between him and the Corporation but has been unable to complete the construction within the time stipulated in the agreement to lease for reasons beyond his control, the Managing Director may permit extension of time for completion of buildings, factory, structure or other work on payment of additional premium at the following rates:-

The above Regulation was substituted with effect from 10th November 1983.

6. Smt. Iyer, learned Counsel appearing for the Petitioners, submitted that on the true interpretation of clauses of the agreement for lease, it would appear that the amount of premium payable by the Petitioners in respect of extensions granted was governed by Regulation 7 as it stood at the time of the execution of the agreement. Smt. Iyer in fact drew our attention to other clauses of the said document viz. Clauses 2, 3(c), (d) and (f). Some of the clauses have been

reproduced above. It was her contention that wherever it was intended that law or the regulation for the time being in force was to be applicable, the same was provided for in the said clauses referred to by her. However, as far as clause 6 was concerned, it simply referred to the payment of additional premium at the scale provided by Regulation 7. Thus, it was intended that Regulation 7 as it stood at the time of execution of the agreement was applicable. Mr. Advocate General on the other hand submitted that reference to Regulation 7 in clause 6 would mean the Regulation 7 as it stood at the time of grant of extension and cannot be interpreted to mean that it would remain stable despite several extensions being granted over a period of time. In fact, Mr. Advocate General drew our attention to the surrejoinder filed in the matter to the affidavit in reply filed wherein the object of providing appropriate premium has been narrated. We are in fact not concerned as to why Regulation 7 originally did not provide for additional payment. The only question before us is how to interpret clause 6 of the agreement.

7. It is true that the clauses referred to by Miss Iyer viz. Clauses 2, 3(c), (d) and (f) of the agreement speak of law applicable from time to time, however, the clause which is nearer to the dispute is clause 3(e) which is again reproduced below:-

"(e) That he/they/it will pay all rates, taxes, charges, claims and outgoing chargeable against an owner or occupier in respect of the said land and any building erected thereon."

From this clause it is obvious that although it does not say that the lessee will have to pay rates, taxes, charges etc. as payable as per law for the time being in force, it is clear to us that whatever is the law and whatever is the rate prevailing at the time of payment would be the rate applicable in the case. Mr. Advocate General cited the decision of the Supreme Court in the matter of Padma Srinivasan Vs. Premier Insurance Company Limited, wherein the Supreme Court held that where the Insurance Company which had issued certificate of insurance to the owner of a truck had undertaken "liability as the one under Chapter VII of the Motor Vehicles Act 1939". and the accident occurred during the currency of the policy the insurer's liability for third party risks under the statutory policy would not be limited to Rs. 20,000 according to the relevant legal provision as it existed on the date on which the policy came into force but would be extended to Rs. 50,000/- in accordance with the legal provision as it stood on the date of the accident when the accident occurred during the currency of the policy. The Supreme Court further held that the liability must mean liability as determined under Chapter VIII at the relevant time, that is to say, at the time when the liability arises and since the liability of the insurer to pay a claim under a motor accident policy arises on the occurrence of the accident and not until then, one must necessarily have regard to the state of the law obtaining at the time of the accident for determining the extent of the insurer's liability under a statutory policy. In fact, the Supreme Court went to the extent of saying that when the

contracting parties did not incorporate the provisions of Chapter VIII of the Act in their contract, that is to say, they did not identify the liability of the promisor on the basis of the provisions of Chapter VIII as they stood on the date when the contract was made, they merely referred to the provisions of Chapter VII, which means "the provisions of Chapter VIII in force at any given time". the relevant time being the date on which the right to sue accrues or correspondingly the liability arises. Mr. Advocate General further referred to a decision of the Supreme Court in the matter of Pune Cantonment Board and another Vs. M.P.J. Builders and another, . In that matter, the Respondent No. 1 was granted sanction for construction under the provisions of Cantonments Act, 1924. The building bye-laws existing at the time of the sanction did not contain any restrictions with regard to the Floor Areas Ratio or number of floors or height of the building. Subsequently, such restrictions came into force. The Supreme Court in this background held that despite the sanction granted before the subsequent restrictions came into effect, the matter would be governed by the subsequent restrictions. We see considerable force in the submissions made on behalf of Mr. Advocate General. As held by the Supreme Court in the matter reported in Padma Srinivasan Vs. Premier Insurance Company Limited, the words "as amended from time to time" must be read into clause 6 of the said agreement after the words "Regulation No. 7 of New Bombay Disposal of Lands Regulations 1975". In our opinion, it cannot be argued by the Petitioners that even when extensions are granted from time to time, the rate of premium provided in Regulation 7 as it stood at the time of execution of the agreement would prevail. In this view of the matter, we cannot accede to the submissions made by Miss Iyer.

8. Miss Iyer next submitted that in any view of the matter, the amended Regulation 7 is made retrospective and this is not permissible in law. To be precise, it was her submission that the said regulations were in the nature of delegated legislation and delegated legislation cannot apply to certain transactions and cannot disturb the vested rights and that there was no power with the Respondent to make any retrospective regulation. Miss Iyer in support of this submission, relied on the decisions of the Supreme Court in the matters of Hukam Chand etc. Vs. Union of India (UOI) and Others, , N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others, and P. Mahendran and others Vs. State of Karnataka and others, . It is not necessary for us to discuss in detail these three authorities decided by the Apex Court as we cannot possibly have any quarrel with the legal propositions of law laid down by the Supreme Court. However, in our view, the amended regulation is not retrospective in operation as contended by Miss Iyer. Applying the above mentioned decision of the Supreme Court reported in Padma Srinivasan Vs. Premier Insurance Company Limited, , the amended Regulation 7 would become applicable in respect of extensions granted after 10th November 1983 i.e. the date on which new regulation was substituted for the original Regulation 7. The recovery which is made by the Respondents is in respect of extensions granted after 10th

November 1983 as may be seen from the dates given earlier. Had it been the case that in respect of any extension granted prior to 1983 that the increased rate of premium was sought to be recovered, then it could have been argued that the said was retrospective and was thus contrary to law. That not being the case, there is no question of our agreeing with Miss Iyer. In this view of the matter, we cannot accede to this submission of Miss Iyer.

9. Miss Iyer next submitted that as averred in the affidavit in rejoinder of the Petitioners dated 24th October 1996, to be precise para 6 thereof, in respect of several other parties, premium at the previous rate has been charged. Thus this amounted to discrimination. It was thus her submission that the Petitioner No. 1 and the said other parties were similarly situated and yet the Petitioners have been discriminated. Mr. Advocate General drew our attention to the surrejoinder dated 30th October 1996 filed by the Respondents wherein while dealing with this submission, the Respondent have stated that the same was a mistake on their part and the Respondents were taking necessary steps to recover the additional premium which was required to be paid by the said parties. As far as Miss Iyer's submission regarding different treatment having been meted out is concerned, Mr. Advocate General relied on two decisions of the Supreme Court. Relying on the decision in the matter of Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others, , he submitted that assuming the Respondent Corporation has committed some irregularity in the past, the same would not confer a right on the Petitioner. It was thus his submission that the guarantee of equality before law is a positive concept and cannot be enforced in a negative manner. In the said matter, the Supreme Court held as follows :-

"9. Apart from that even if it is assumed that concession was shown to such stallholders by the N.D.M.C. the appellants cannot make grievance in respect of discrimination under Article 14 of the Constitution. Having agreed to the terms of allotment they cannot legitimately claim that they should also be treated in the same manner. There appears to be some confusion in respect of the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. This guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or Court in a negative manner. To put it in other words, if an illegality or irregularity has been committed in favour of any individual or a group of individuals, the others cannot invoke the jurisdiction of the High Court or of this Court, that the same irregularity or illegality be committed by the State or an authority which can be held to be a State within the meaning of Article 12 of the Constitution, so far such petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are not sanctioned by law in their favour on principle of equality before law. Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such

claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination, None of the 98 stall-holders were impleaded as parties to the writ petitions. The appellants questioned the validity of the allotment of 98 shops on concessional rates, without trade zoning restrictions in favour of the stall-holders of Panchkuian Road, but they were primarily interested that same concessions in respect of licence fee and relaxation in trade zoning restrictions, be also extended to them. Any such claim on their behalf cannot be entertained on the basis of concept of equality before law as enshrined in Article 14 of the Constitution".

Mr. Advocate General also relied on the decision of the Supreme Court in the matter of Chandigarh Administration and another Vs. Jagjit Singh and another, wherein the Supreme Court inter alia held as follows :-

"8. We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle, Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent - authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent - authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent - authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law - indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law - but even if it cannot be made a basis for its repetition . By refusing to direct the respondent - authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination, Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that

the petitioner's case is similar to the other person's case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. It is not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the Court nor is his case. In our considered opinion, such a course barring exceptional situations - would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi judicial power, we express no opinion. That can be dealt with when a proper case arises)".

The law laid down by the Supreme Court in the above two decisions is as always so clear that it does require any elucidation by us. Thus, we find no substance in Miss Iyer's this submission also.

10. Miss Iyer next submitted that while granting first three extensions, the Respondents, although Regulation 7 had been brought into operation by them, charged premium as per Regulation 7 as prevalent at the time of agreement. It was her submission that this having been done, the Respondents were estopped in law from demanding and in fact recovering premium at the higher rate as per the amended Regulation 7. Mr. Advocate General, on the other hand, submitted that there can be no estoppel against law. He relied on the decision of the Supreme Court in the matter of Shabi Construction Company Vs. City and Industrial Development Corporation and Another, wherein the Supreme Court has inter alia held that the doctrine of promissory estoppel cannot be invoked to compel the public bodies or the Government to carry out the representation or promise which is contrary to law or which is outside their authority or power. This being the settled position in law, we are required to say nothing further in respect of this submission except saying that we cannot accede to this submission of Miss Iyer also.

11. Although Miss Iyer started her arguments by taking a stand that there was no delay involved in the matter and that the same was made clear in the letter written by the Petitioners to the Respondents viz. letters dated 19th January 1988 and 11th May 1988, it was her submission that in fact the entire project was complete except in respect of lift and fire fighting equipment. Thus, according to her, the building was completed within time and there was no

question of any delay. She drew our attention to the letter dated 4th December 1987 addressed by the Petitioners' Architects to the Respondents alongwith its completion certificate dated 30th November 1987. She took us through the entire letter, However, we were not at all impressed by her submission. The letter in fact states :-

"Our clients intend to occupy the ground floor of the above building and we hereby make an application for the same. As regards the requirements the same are complied with and the infrastructure is already completed. The upper portions of the building are also nearly complete except for the work of the lifts, fire fighting etc."

From the said extract, it is obvious that the building was not complete as contended. If it was complete as contended by Miss Iyer, the question would arise why only partial occupation certificate was asked for. In this view of the matter, it appears to us that the building was not completed within the time and that therefore the Petitioners were required to ask for extension and the Respondents while granting extension were entitled to charge the premium as applicable on the date of their granting extension. In fact, several extensions have been granted and there was nothing wrong on the part of the Respondents to recover premium as per the amended Regulation 7. Thus, we do not see any substance in the submissions of Miss Iyer for the Petitioners.

12. In view of the above, the Petitioners have failed to make out any case for interference by this Court. The petition requires to be and is dismissed. Rule is discharged. However, looking to the facts and circumstances of the case, there shall be no order as to costs.