

(2006) 06 BOM CK 0086

In the Bombay High Court

Case No : Writ Petition No. 9467 of 2005

Popcorn Entertainment and Another

APPELLANT

Vs

The City and Industrial Development Corpn. and Others

RESPONDENT

Date of Decision : 30-06-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2007) 2 BomCR 880 : (2006) 5 MhLj 450

Hon'ble Judges : V.M. Kanade, J;V.G. Palshikar, J

Bench : Division Bench

Advocate : Vikas Singh, Addl. Solicitor General of India, Amrita Narayan and H.Toor, instructed by Navdeep Vora and Associates, for the Appellant; R.M. Sawant and P.I. Khemani, AGP, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Palshikar, J.—By these two petitions the petitioners have challenged the action taken by the respondents the City and Industrial Development Corporation (hereinafter referred to as "CIDCO"). The petitioners Popcorn Entertainment Corporation Limited in Writ Petition No. 9467 of 2005 and Platinum Entertainment in Writ Petition No. 9468 2005 were allotted plot of land by CIDCO for erecting entertainment complex in Navi Mumbai district. That was to be a commercial building to be erected by construction of multiplex complex and allied complimentary activities. The price fixed by CIDCO was paid by the petitioners and the petitioners were put in physical possession of the plot.

2. By the impugned communication CIDCO has cancelled the entire transaction and claimed possession of the plot from the petitioners. Hence they have filed these petitions under Article 226 of the Constitution of India praying for quashing of the entire action and interim relief of injunction restraining CIDCO from taking possession. Both the petitions assail the order passed by CIDCO canceling agreement of lease as also praying for quashing of stop work notice issued by CIDCO. Initially the matter was heard in vacation and thereafter was adjourned

from time to time. When the matter was called out today the learned Counsel appearing on behalf of the petitioners was asked to explain the maintainability of the petition as effective alternate remedy by way of civil suit for declaration and injunction was available to the petitioners. When on earlier occasion such query was made by the Court relying on certain judgments of the Bombay High Court time was sought by the learned Advocate to consider those judgments and make submissions.

3. Accordingly today the learned Counsel made his submissions and relying on certain passages in the judgments itself contended that these petitions are tenable. This Court in the Case of Raja Bahadur Motilal and Another Vs. State of Maharashtra and Others, held that when efficacious alternate remedy is available writ jurisdiction should not be invoked. This Court has observed as under:

The tendency to flout the rule of law is on increase and consequently judicial activism is also increased, and in several cases writ jurisdiction is moved in spite of the fact that alternative efficacious remedy is available on a specious plea and it is expedient in public interest to do so. In an exceptional case of public interest where large number of people are affected it may be that a writ petition could be entertained but the question is whether it would be a writ jurisdiction to be invoked as a matter of course even in dispute intra parties where there is no public interest at all or involved at all. Taking into consideration the fact that the question is ever repeated, the court are pressed to decide that question so that as far as our court is concerned the same principle of law that writ jurisdiction should not be invoked where alternate remedy is possible, has to be followed. It is a mandate issued by the Supreme Court that the powers therein, i.e. Article 226 shall not be exercised in cases where alternate remedy is available, always leaving apart certain well known glaring exceptions.

Learned Counsel relied upon the observations of this Court that in exceptional case of public interest where large number people are affected it may be that a writ petition could be entertained and it was contended placing heavy reliance on the judgment of the Supreme Court in the case of Whirlpool Corporation v/s Registrar of Trademarks Mumbai and Ors. (1998) 8 SCC 107 that the present petition is tenable. The Supreme Court of India has observed in para 15 of its judgment as under:

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case- law

on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

The Supreme Court has observed in the quotation above that at least in three contingencies a writ petition can be entertained by the High Court and those exceptional contingencies were mentioned. They are (i) Violation of fundamental right; (ii) Violation of principles of natural justice and (iii) The Impugned order of proceedings are wholly without jurisdiction. The contention of the learned Counsel appearing for the petitioners was that all the three ingredients are present in these petitions.

4. It was the submission of the learned Counsel for the petitioners that building of multiplex complex for entertaining and other commercial activities was a necessity in public interest as large section of people residing in Navi Mumbai will be deprived of their public entertainment if this complex is not allowed to come up. This according to him, is larger public interest to safeguard which we must exercise writ jurisdiction. We are unable to accept this submission that the existence of entertainment facilities in a particular town is a matter of grave public interest requiring interference by this Court it is discretionary jurisdiction under Article 226 of the Constitution. In our opinion, interfering with a cancellation of an agreement involving building of entertainment complex is certainly not a public interest requirement for which the golden rule of non-interference should be kept away.

5. Second submission of the learned Counsel was that there has been gross violation of the principles of natural justice. Factually what has been done by CIDCO is in spite of having entered into an agreement of lease and having executed it by receiving money and delivering the possession the CIDCO could not cancel the executed agreement. It is obviously a case where the execution of contract is unilaterally cancelled. Such action of course is justiciable and can be questioned by filing appropriate civil suit in which all interim reliefs of the kind necessary for the petitioners as are claimed in these petitions can be asked for. There are enough safeguards in the CPC to seek urgent orders from civil courts of competent jurisdiction. It cannot therefore be said that the remedy of civil suit is not efficacious. Similarly unilateral cancellation of executed contract is the cause of action. In such an event there is no question of principles of natural justice being violated. The CIDCO has unilaterally cancelled the agreement. Whether it can do so or not can be decided by civil court of competent jurisdiction. Whether principles of natural justice are attracted to a particular action or not is also something which civil court can decide. We are unable to accept the submission that wherever there is violation of principles of natural justice no other Court is competent to deal with it except this Court in its writ jurisdiction under Article 226 of the Constitution.

6. It was then contended that CIDCO has given plot of lands to several others without inviting tenders for the same. It had done so in relation to the petitioner

also earlier. Earlier grant without auction is maintained by CIDCO whereas grant in favour of the petitioners is unilaterally cancelled. This according to him, amounts discrimination which is framed by Article 14 of the Constitution. Article 14 of the Constitution reads thus:

Article 14. Equality before law.- "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." It is therefore fundamental right of a citizen. Both the petitioners are corporate bodies and they cannot claim any such fundamental right. Assuming that there can exist such right in corporate body merely because CIDCO has acted in particular manner in relation to a particular group it cannot be said to have acted arbitrarily when it thinks not to act with the petitioners in the same manner. In our opinion, there is, therefore no violation of Article 14 of the Constitution.

7. According to us, none of the well known exceptions carved out by the Supreme Court of India in Whirlpool Corporation's case exist in the present petitions. Same are therefore liable to be dismissed for availability of efficacious alternate remedy. Since we have dismissed petitions as being not tenable for availability of alternate remedy we do not think it necessary to hear the learned Counsel on factual merits of the case. Lastly it was submitted that the interim order granted earlier should be continued for four weeks. In our opinion, the petitioners being corporate bodies engaged in development and building activities basically for entertainment and other commercial purposes do not deserve any such protection. Hence their request is rejected.

8. We would like to note here that it is consistent view taken by this Court in relation to alternate remedy. Factually two such petitions where identical action was challenged have been dismissed by this Court in limine for existence of alternate remedies. Apart from this aspect, judicial discipline requires us to take consistent view in all cases where according to us alternate remedy exists. We have been consistently rejecting entertainment of petitions when alternate remedies exist. These petitions also therefore deserve the same treatment and therefore we do not consider several other factual submissions sought to be made by the learned Counsel as we do not wish to entertain petitions on merits. In the result, both the petitions are dismissed. Interim orders earlier granted are vacated.