

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**Civil Appeal No 6891 of 2021
(Arising out of SLP(C) No 11986 of 2021)**

Kalyan Dombivli Municipal Corporation & Ors

.... Appellant(s)

Versus

Dinesh Babulal Parmar & Anr

....Respondent(s)

WITH

**Civil Appeal No 6892 of 2021
(Arising out of SLP(C) No 12282 of 2021)**

O R D E R

- 1 Leave granted.
- 2 The first respondent is a shopkeeper, who was a tenant of certain premises belonging to the Kalyan Dombivli Municipal Corporation¹. The premises were required to be demolished because they were rendered unsafe for habitation.
- 3 The order to vacate became the subject of litigation, resulting in an order of the Bombay High court dated 27 September 2019. By an order of this Court dated 19 March 2021, the first respondent and other shopkeepers who had challenged the order of the High Court, were granted time to vacate until 30 April 2021. The order of this Court is extracted below:

“1 The petitioners had challenged a notice of demolition issued by the Kalyan Dombivli Municipal Corporation. The demolition of the structure is proposed on the

1 “Municipal Corporation”

ground that it has become unsafe for habitation. There is a report of the Indian Institute of Technology Bombay, Powai which categorically affirms the position that the building has been rendered structurally unsafe. This is in addition to the earlier report of VJTI which had also reached the same conclusion. In this view of the matter, no error can be found in the judgment of the High Court dismissing the writ petition under Article 226 of the Constitution.

- 2 Mr Vinay Navare, learned Senior Counsel appearing on behalf of the petitioners, however, submits that the petitioners, who are nine shop owners, have subsisting leases executed in their favour by the Municipal Corporation and in the event that the Municipal Corporation seeks to put up a commercial structure, the petitioners must be suitably rehabilitated. He submits that the grievance of the petitioners was that the Municipal Corporation was likely to offer alternate premises in the basement of the mall which may not be suitable for carrying on their business.
- 3 Mr Subrat Birla, learned counsel appearing on behalf of the Municipal Corporation, submits that the subject matter of the challenge before the High Court was a notice of demolition issued by the Municipal Corporation and the grievance set out above was not brought before the High Court.
- 4 On the other hand, Mr Vinay Navare contests this by adverting to the averments in paragraph 9 of the writ petition where a specific grievance was made that after the petitioners are evicted from the premises, the Municipal Corporation intends to put up a commercial structure.
- 5 For the present, it is not necessary to adjudicate upon any issue other than the need for demolition which has been established by the report of the Indian Institute of Technology Bombay, Powai. Insofar as the claim of the petitioners for being rehabilitated in the premises which would be constructed by the Municipal Corporation is concerned, we permit the petitioners to submit a representation to the Commissioner of the Municipal Corporation. In the event that such a representation is made, the competent authority shall examine it sympathetically and within a period of one month from the date of the submission of the representation bearing in mind the submission that the petitioners have subsisting leases. Thereafter, if the petitioners have any subsisting grievance, it would be open to them to pursue suitable remedies in accordance with law, including by way of a fresh writ petition under Article 226 of the Constitution.

- 6 Subject to the aforesaid, the Special Leave Petitions are dismissed.
- 7 However, time to vacate the premises is granted until 30 April 2021.
- 8 Pending application stands disposed of.”

4 Following the liberty which was granted by this Court, the first respondent, with other shopkeepers, submitted a representation to the Municipal Corporation. The Municipal Corporation, while deciding the representation, has stated that as and when the project on the site of the erstwhile structure comes up, the claim will be considered on priority. The first respondent thereafter moved the High Court in a writ petition in which the Division Bench, by an order dated 28 May 2021 (i) directed the Municipal Corporation to provide temporary alternate accommodation in the vicinity within four weeks; and (ii) permitted the first respondent to file fresh proceedings if permanent accommodation is not made available in eighteen months. The Municipal Corporation has moved these proceedings aggrieved by the directions of the High Court of Judicature at Bombay.

5 On 13 August 2021, this Court, while issuing notice, recorded the following submissions of the Solicitor General appearing on behalf of the Municipal Corporation:

- “(i) The premises in which the respondents were carrying on their business were required to be demolished due to the unsafe nature of the building;
- (ii) The Kalyan Dombivali Municipal Corporation intends to put up an alternative structure at the site; and
- (iii) While disposing of the earlier proceedings, this Court had granted liberty to the respondents to submit a representation to the Municipal Commissioner, and the

Municipal Commissioner has stated that when the project comes up, the claim of the respondents would be considered on priority.”

- 6 Hence, it has been urged that there was no warrant for the High Court to issue a direction that the Municipal Corporation must provide temporary alternate accommodation in the vicinity of the first respondent.
- 7 We have heard Mr Tushar Mehta, Solicitor General with Mr Subrat Birla, counsel appearing on behalf of the appellants, Mr Prafulla Shah, counsel appearing on behalf of the first respondent and Mr Kunal Cheema, counsel appearing on behalf of the State of Maharashtra.
- 8 The hearing of the present proceedings was adjourned in order to enable the Municipal Corporation to indicate to this Court the time frame within which alternate accommodation would be provided to the first respondent.
- 9 Mr Subrat Birla has stated that his instructions are that there is an arbitration proceeding which is going on in respect of the project as a result of which actual completion of the project may be delayed, but in all probability, possession of alternate premises would be granted to the first respondent who was a tenant in the erstwhile structure within four years.
- 10 On the other hand, Mr Prafulla Shah submits that at Exhibit-A to the counter affidavit is a reply dated 10 August 2021 received from the Municipal Corporation in response to a query under the Right to Information Act 2005. The reply, according to the counsel, indicates a list of structures where alternative accommodation can be provided to the first respondent, with other shopkeepers.
- 11 At this stage, the Court cannot be oblivious of the fact that the first respondent was a small shopkeeper who was a tenant of the premises. The building in which premises were situated was required to be demolished since it was

rendered unsafe. The entitlement of the first respondent to be rehoused in the new construction has been accepted by the Municipal Corporation. A period of four years for the completion of the project would leave the first respondent out of occupation and without a means of livelihood for an interminably long period. The first respondent has annexed to the counter affidavit a list of vacant premises of the Corporation (on the basis of information furnished to an RTI query) in which temporary alternate accommodation can be provided. Having regard to the humanitarian aspect involved in the present matter, the Municipal Commissioner shall consider the representation submitted by the first respondent afresh, particularly on the basis of the information which has been made available to the first respondent under the Right to Information Act 2005, a copy of which is annexed at Exhibit-A to the counter affidavit. Based on the material which has been provided by the first respondent in regard to the availability of alternate accommodation, the Municipal Commissioner shall take a considered decision, after due and sympathetic consideration of the plea of the first respondent.

- 12 We may also record that the first respondent has submitted that, in the alternative, he may be permitted to put up a temporary structure on the project site with an undertaking that the first respondent would vacate it, as and when required, for the purpose of the reconstruction of the structure. This is a matter for the Municipal Commissioner to decide since this Court would not be inclined to pass an order which will come in the way of the fresh development which is to take place. We accordingly direct the Municipal Commissioner to take a final decision within a period of one month from the date of receipt of a certified copy of this Court, having regard to what has been observed above.
- 13 In view of the above directions, the impugned orders of the High Court dated 28 May 2021 and 9 July 2021 shall stand substituted with the above directions.

The fine of Rs 25,000 imposed by the High Court is, in the facts and circumstances, set aside.

14 The appeals are accordingly disposed of.

15 Pending application, if any, stands disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[A S Bopanna]

New Delhi;
November 15, 2021
-S-

ITEM NO.34 Court 4 (Video Conferencing) SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).11986/2021

(Arising out of impugned final judgment and order dated 28-05-2021 in WPST No. 10901/2021 passed by the High Court of Judicature at Bombay)

KALYAN DOMBIVLI MUNICIPAL CORPORATION & ORS. Petitioner(s)

VERSUS

DINESH BABULAL PARMAR & ANR. Respondent(s)

(WITH IA No. 93024/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 96398/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH

SLP(C) No. 12282/2021 (IX)

(WITH IA No. 95536/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 15-11-2021 These petitions were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE A.S. BOPANNA

For Petitioner(s) Mr. Tushar Mehta, SG
 Mr. Subrat Birla, Adv.
 Mr. S. C. Birla, AOR

For Respondent(s) Mr. Prafulla Shah, Adv.
 Mr. Salim A. Inamdar, Adv.
 Ms. Gunjan Shah, Adv.
 Ms. Kayval Shah, Adv.
 Mr. Modassir H. Khan, Adv.
 Mrs. Pragya Baghel, AOR

Mr. Kunal Cheema, Adv.
Mr. Rahul Chitnis, Adv.
Mr. Sachin Patil, AOR.
Mr. Aaditya A. Pande, Adv.
Mr. Geo Joseph, Adv.

**UPON hearing the counsel the Court made the following
O R D E R**

- 1 Leave granted.
- 2 The appeals are disposed of in terms of the signed order.
- 3 Pending application, if any, stands disposed of.

**(SANJAY KUMAR-I)
AR-CUM-PS**

**(SAROJ KUMARI GAUR)
COURT MASTER**

(Signed order is placed on the file)