A JANHIT MANCH & ANR.

v.

STATE OF MAHARASHTRA & ORS.

(Transfer Petition (Civil) No. 567 of 2017 etc.)

B JULY 31, 2017

[A. K. SIKRI AND ASHOK BHUSHAN, JJ.]

Transfer Petition:

PIL filed before High Court – High Court noticed that issues C *raised therein were already pending consideration before Supreme Court – Granted liberty to the petitioner to file transfer petition – Pursuant thereto transfer petition seeking transfer of the PIL to the Supreme Court – SLPs also filed by parties against interim orders passed in the PIL – Held: The issues pending consideration before* D *Supreme Court has bearing on the PIL – It is in the interest of parties to decide the issues finally – Transfer petition allowed – SLPs challenging the interim orders dismissed with liberty to seek alteration/variation/modification of the interim orders before this Court.*

E **Allowing the transfer petition and dismissing the SLPs, the Court**

HELD: 1. The issues which have been raised in the SLP(C) CC Nos.13527-13528 of 2016 filed by the petitioners and SLP(C) Nos.10704-10705 of 2016 filed by respondent No.6 have bearing on the PIL No.17 of 2017 and it is in the interest of all the parties F **that such issues be decided finally, when the issues have already been entertained by this Court. [Para 21] [436-D]**

2. This Court is considering only the petition for transfer of PIL No.17 of 2017 as well as the challenge to only interim orders passed by Bombay High Court in PIL No.17 of 2017, the G **Court refrains to express any opinion on various aspects relating merits of the case. The observations made by this Court in this order are limited for deciding the transfer petition and SLPs before this Court, such observations may not have any bearing on the issues when they are finally heard and decided. [Para 22]** H **[436-F]**

3. SLP(C) Nos.10704-10705 of 2016 filed against order dated 27.01.2016 being pending consideration, ends of justice be served in allowing the transfer petition transferring the PIL No.17 of 2017 from Bombay High Court to this Court to be heard alongwith SLP(C) Nos.10704-10705 of 2016 and SLP(C) CC Nos. 13527-13528 of 2016. The transfer petition is thus allowed. [Para 24][436-H; 437-A-B]

4. As regards SLP(C) Nos.11749-11750 of 2017, which has been filed against the interim orders dated 24.02.2017 and 17.03.2017 passed by the Bombay High Court, in PIL No. 17 of 2017, in view of the order passed in Transfer Petition(C) No.567 of 2017, the PIL No.17 of 2017 is being transferred to this Court. As on the date, there is no good ground to set aside the aforesaid interim orders, however, PIL No.17 of 2017 having been transferred to be heard by this Court, it is open for the parties to pray for alteration/modification/variation of the aforesaid interim orders before this Court. The SLP(C) Nos.11749-11750 of 2017 are dismissed subject to above observations. [Para 25][437-B-C]

CIVIL ORIGINAL JURISDICTION: Transfer Petition (Civil) No. 567 of 2017.

Under Article 139A of the Constitution of India

WITH

SLP (C) Nos. 11749-11750 of 2017.

Mukul Rohatgi, Kapil Sibal, Chander Uday Singh, Arvind Nayar, Sr. Advs., Prashant Bhushan, Ranbir Singh, Ms. Garima Prashad, Ms. Ruby Singh Ahuja, Saurav Agarwal, Lalit Kataria, Ms. Deepti Sarin, Sidhanth Gupta, M/s. Karanjawala & Co., Ms. Meera Mathur, Advs. for the appearing parties.

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J. 1. The Transfer Petition and the Special Leave Petition arising out of similar facts and events have been heard together and are being decided by this common order. The background facts giving rise to the transfer petition as well as Special Leave Petition need to be noted first.

2. The parties in both the cases being common shall be hereinafter

A referred to as described in the transfer petition. Janhit Manch and another which had filed the PIL at the Bombay High Court are referred to as petitioners whereas, Shri Ram Urban Infrastructure Ltd.(SRUIL) is referred to as respondent No.6 and other respondents are referred to as described in transfer petition.

B 3. The genesis of dispute is PIL No. 43 of 2012 filed by petitioners in the Bombay High Court. In PIL No.43 of 2012, petitioners have questioned the action of respondent No. 3 in respect of concessions granted for development of various buildings in the city of Mumbai i.e. concessions granted in respect of development of various buildings which consequently enabled the developers to amass additional areas under C various heads, such as refuge areas, passages, flower beds, decks etc., free of Floor Space Index ("FSI"). The case of the respondent No.6 was specifically mentioned and challenged. It was pleaded that respondent No.6 against the permitted FSI of 54715.196 sq. mtrs. had used additional FSI of approximately 6355.58 sq. mtrs. under the guise D of various heads such as refuge areas, passages, decks etc.

4. The Bombay High Court *vide* its judgment dated 13.05.2013 decided the PIL No.43 of 2012. In its judgment, the High Court held that the refuge areas granted to respondent No.6 with respect to the said building was in utter excess of norms. Thus, Municipal Commissioner was directed to re-examine the issue of excess refuge area and to re- E issue the FSI. Petitioners filed SLP(C) No.20279 of 2013, challenging the judgment of the High Court dated 13.05.2013.

5. The respondent No.6 had proceeded to construct a 56 storey building. Respondent No.6 also proposed to construct a public parking lot(PPL) of three Basements + Lower ground + Stilt + 15 Floors. Stop F Work Notice was issued by Mumbai Municipal Corporation on 14.12.2011 to respondent No.6 to desist from continuing with construction of public parking lot. The said Stop Work Notice was challenged by respondent No.6 in Bombay City Civil Court by L.C. Suit No.2942 of 2011. After judgment of the High Court dated 13.05.2013, the respondent G No.6 approached the Municipal Commissioner. The Municipal Commissioner passed an order on 12.09.2013. The Municipal Commissioner in his order observed that (i) Refuge areas would be provided free of FSI only to the extent of 4 per cent of the built up area it served in the said building; (ii) those areas in excess of requirements would be counted in FSI in accordance with National Building Code, H 2005.

7. Respondent No.6, aggrieved by the order dated 12.09.2013, filed a Writ Petition (c) No.2223 of 2013 before the Bombay High Court. The order of Civil Court dated 16.05.2013 whereby Stop Work Notice was set aside, was also challenged by Municipal Corporation of Greater Bombay in the High Court by filing a First Appeal No.884 of 2015. A

8. The petitioners' SLP(C) No.20279 of 2013 was finally heard, in which separate and dissenting judgments were delivered on 25.04.2014, which mandated the SLP to be referred to a larger Bench. The petitioner had filed another PIL No.133 of 2015, where certain amendments in DCR were challenged. The Writ Petition filed by respondent No.6 being Writ No.2223 of 2013 was decided on 22nd, 25th and 27th January 2016 alongwith First Appeal No.884 of 2015. B C

9. Municipal Commissioner was directed to hear the respondent No.6 and to decide what should be the reasonable refuge area in the said building. The order dated 12.09.2013 was confirmed in parts. The SLP(C) No.20279 of 2013 was listed on 11.03.2016 on which date, the Three Judge Bench disposed off the SLP holding that in view of judgment of the High Court dated 22nd, 25th and 27th, January 2016 no issue is alive, however, the liberty was granted to make a mention for recall of the order. D

10. The judgment of Bombay High Court dated 22nd, 25th and 27th January, 2016 was challenged by the respondent No.6 before this court in SLP(C) No.10704-05 of 2016. This Court on 29.04.2016 has issued a notice in SLP of respondent No.6, however, no interim order was passed. The petitioners also preferred the SLP(C) CC Nos.13527-13528 of 2016, challenging the above judgment of the Bombay High Court. Petitioners also filed IA 6 of 2016 for recalling the Three Judge Bench order dated 11.03.2016, contending that several issues remain alive for adjudication. After the order of Bombay High Court dated 22nd, 25th and 27th January, 2016, respondent No.3 passed an order on 31.08.2016. Respondent No.3 *inter alia* held that: E F

> *"(a) The areas provided on the external peripheral face of the flat be allowed as refuge area;* G
>
> *(b) The refuge areas at the inside of the building at entrances of flats shall not be considered as refuge area;*

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A *(c) The four full floors shown as refuge will not be taken as refuge; and*

(d) The structural columns falling in the above decided refuge areas can be allowed free of FSI."

B 11. The order dated 31.08.2016 passed by respondent No.3 was challenged by the petitioners by filing PIL No.17 of 2017. High Court *vide* its order dated 24.02.2017 directed the respondent No.2 to file its affidavit in reply within three weeks and not to act upon the impugned order dated 31.08.2016 till the next date. Subsequently, matter was taken by the Bombay High Court for hearing on 17.03.2017. After hearing C the counsel for both the parties, an order was passed by the Bombay High Court on 17.03.2017. Para No.4 to 7 of the order are to the following effect:

"(4) Apparently, the subject matter of the present litigation is an order dated 31.08.2016 at "Exhibit C" (page 58) which is D *the order of the Municipal Commissioner of Greater Mumbai in pursuance of the directions of this Court dated 27.01.2016 in Writ Petition (c) No. 2223 of 2013.*

(5) Challenging the orders in Writ Petition (c) No.2223 of 2013, both the parties i.e. the petitioners and respondent No. E *6 have filed Special Leave Petitions. The petitioners before us have filed Special Leave Petition No.13527 of 2016, and respondent No.6 has filed Special Leave Petition Nos.10704 to 10705 of 2006. Admittedly no interim orders are issued in the above SLPs before the Apex Court. Meanwhile, in pursuance of the directions in Writ Petition (c) No.2223 of* F *2013, the Commissioner has passed an order dated 31.08.2016 which is the subject-matter of the present Public Interest Litigation. Since the larger issues are pending before the Apex Court pertaining to the very same alleged illegalities committed by respondent No.6 so far as the property in* G *question, both the parties are in ad idem with the submission that the impugned order of the Commissioner dated 31.08.2016 also can be challenged before the Apex Court since that will put an end to the controversy between the parties once for all.*

H *6. In that view of the matter, the parties are at liberty to*

approach the Apex Court with necessary application for transferring the present Public Interest Litigation also to be tagged alongwith the Special Leave Petitions pending before the Apex Court.

7. In order to enable the parties to take appropriate course of action as stated above, we continue the interim order dated 24.02.2017 for a period of four weeks."

12. In view of the order of the Bombay High Court dated 17.03.2017, the Transfer Petition has been filed by the petitioners in this Court.

13. SLP(C) Nos.11749-11750 of 2017 have been filed by respondent No.6, questioning the interim order passed by the Bombay High Court dated 24.02.2017 and 17.03.2017 in PIL No.17 of 2017.

14. We have heard Shri Mukul Rohatgi, senior counsel appearing for the petitioners and Shri Kapil Sibal, senior counsel appearing for respondent No.6. Shri Mukul Rohatgi contends that the judgments of the Bombay High Court dated 22nd, 25th and 27th January 2016 have been challenged by both petitioners as well as respondent No.6 by filing different SLPs, which are pending for consideration. Notice has also been issued by this Court in SLP filed by respondent No.6 on 29.04.2016 and on 18.07.2016, SLP(C) Nos.13527-13528 of 2016 filed by the petitioners have been ordered to be tagged with the SLP(C) Nos.10704-10705 of 2016. The subsequent order passed by Municipal Commissioner dated 31.08.2016 has been passed, in consequence of the judgment of the Bombay High Court dated 22nd, 25th and 27th January 2016. The order passed by the High Court being already under challenge, by both the parties in this Court, subsequent order dated 31.08.2016 has also been challenged by petitioners by filing PIL No.17 of 2017 wherein, learned counsel for both the parties before the Bombay High Court have stated that the issues, which are raised in PIL No.17 of 2017 are the issues, which are already engaging attention of this Court in above mentioned two SLPs filed by both the parties. The High Court, thus, after further hearing the parties granted liberty to the writ petitioner to file an application for transfer of PIL No.17 of 2017 to be heard alongwith pending SLP. It is submitted that all the issues raised are issues of vital public importance, concerning with safety and security of persons who will occupy the concerned building and it is necessary that issues are

finally decided by this Court so that correct and valid measures are taken by respondent No.2 to respondent No.5 regarding construction and use of the building which will house hundreds of people.

15. Shri Kapil Sibal, Sr. Advocate, vehemently, opposing the transfer petition contends that there is no ground to transfer the PIL No.17 of 2017 in this Court. Municipal Commissioner by an order dated 31.08.2016 has decided all the issues which have been questioned by the petitioners in the High Court where all the issues can be gone into and decided? In view of the subsequent order of the Commissioner dated 31.08.2016, earlier litigation including SLPs filed by both the parties against the judgment of the High Court dated 22nd, 25th and 27th January, 2016 ought not to be required to be adjudicated on merits and it is futile to transfer the PIL to this Court. It is further contended that in none of the Writ Petitions filed by the petitioners or the SLPs any interim order has been passed either by the Bombay High Court or by this Court and it is for the first time that on 24.02.2017 interim order has been passed by the High Court in PIL No.17 of 2017. It is contended that the building is standing for last five years to be occupied by the occupants who are waiting for occupying the flats. Petitioners are under heavy recurring liability by paying interest per month to the extend of crores of rupees, which is causing great hardship and prejudice to respondent No.6. It is submitted that construction of the building has been as per sanction plan and it is not the case of anyone that there is any violation of sanction plan. It is contended that the refuge area is now earmarked adjoining each flats by respondent No.6, which has been rightly accepted by Municipal Commissioner and the four floors which were separately earmarked as refuge area has not been upheld. It is submitted that the PIL initiated by the petitioners is not bona-fide litigation and in fact it has been set up by rival builders with whom respondent No.6 has dispute. It is also submitted that transfer petition deserved to be rejected and the SLP(C) Nos.11749-11750 of 2017 be allowed, setting aside the interim order passed by the High Court dated 24.02.2017 as extended on 17.03.2017 in PIL No.17 of 2017.

16. We have considered the submissions of both the parties and perused the record. The order passed by the Municipal Commissioner dated 12.09.2013, in pursuance of order passed by the Bombay High Court on 13.05.2013 in PIL No.43 of 2012 was challenged by respondent No.6 in Writ Petition(C) No.2223 of 2013 before the Bombay High Court.

The order of the High Court dated 13.05.2013 passed in PIL No.43 of 2013 was already challenged by the Petitioners by SLP(C) No.20279 of 2013. The Writ Petition(C) No.2223 of 2013 filed by respondent No.6 was decided by the Bombay High Court on 27.01.2016, which was challenged by both petitioners and respondent No.6 by means of SLPs, as noted above. After the order dated 27.01.2016, Municipal Commissioner proceeded to pass an order dated 31.08.2016. The Municipal Commissioner after re-examining the issue regarding refuge area held, as follows:

> *"1. Periphery refuge area surrounding each flat on each floor(4 flats in number on each floor) was allowed.*
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> *[Note: The total refuge area allowed by the Commissioner surrounding the flats on each floor amounts to 60% of the habitable area on the respective floor]*
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> *2.4 entire refuge floors were to be blocked.*
>
> *3. National Building Code 2005 would not apply since the building is already constructed as per past approved plans (contrary to the Judgment dated 27.01.2016)."*

17. The order dated 31.08.2016 has been challenged by petitioners by filing PIL No.17 of 2017 in which Bombay High Court passed an order on 24.02.2017 and 17.03.2017, as noted above. The order of Commissioner dated 31.08.2016 has been passed in pursuance and consequence of the judgment of the High Court dated 27.01.2016. Judgment dated 27.01.2016 is now challenged in this Court by SLP filed by both the parties. In SLP filed by respondent No.6 notice has been issued by this Court and the SLP filed by the Petitioners has been tagged with other SLP.

18. The important issues, pertaining to refuge area, FSI are engaging the attention of this Court. Provisions of the Development Control Regulations for Greater Mumbai, 1991 are under consideration. The developments carried out by builders in buildings, which is to house hundreds of people are not question of rights of developers alone. The development regulations and various other statutory rules enjoin performance of various statutory duties and statutory obligations in respect to development of buildings, which are to house hundreds of occupants. The life and safety of occupants is a matter of public importance and the

A issues raised relate to public concern & safety which need to be decided at the earliest.

19. The concern expressed by Shri Kapil Sibal that due to delay caused in finalizing the issues, respondent No.6 has been suffering huge loss, is also a matter of concern. Early decision of such disputes is in the B interest of both the public in general as well as the persons who have carried out development after incurring huge expenditure.

20. It is relevant to note that the Bombay High Court in Paras 4 to 7 of the Order dated 17.03.2017, noticing the facts that issues raised in PIL No.17 of 2017 are already pending consideration in this Court as C mentioned in Para 5 has granted liberty to the petitioners to move an application to file a transfer petition.

21. After having considered the submissions of the parties and perusing the material brought before us, we are of the opinion that issues which have been raised in the SLP(C) CC Nos.13527-13528 of 2016 D filed by the petitioners and SLP(C) Nos.10704-10705 of 2016 filed by respondent No.6 have bearing on the PIL No.17 of 2017 and it is in the interest of all the parties that such issues be decided finally, when the issues have already been entertained by this Court, as noted above.

22. Learned counsel for both the parties although have raised E various submissions touching on the merits of issue but at this stage when we are considering only the petition for transfer of PIL No.17 of 2017 as well as the challenge to only interim orders passed by Bombay High Court in PIL No.17 of 2017, we refrain to express any opinion on various aspects relating merits of the case. The observations made by us in this order are limited for deciding the transfer petition and SLPs F before us, such observations may not have any bearing on the issues when they are finally heard and decided.

23. It is further relevant to notice that the SLP(C) No.20279 of 2013, which was filed by petitioner against the order dated 13.05.2013 of the Bombay High Court in PIL No.43 of 2012, which was disposed of G by Three Judge Bench on 13.05.2013, an application on I.A.6 has also been filed by the petitioners to recall the order and determine the issues. No order has yet been passed in I.A.6 of 2016, which application is waiting for consideration by Three Judge Bench.

24. In view of forgoing discussion, SLP(C) Nos.10704-10705 of

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2016 filed against order dated 27.01.2016 being pending consideration, ends of justice be served in allowing the transfer petition transferring the PIL No.17 of 2017 from Bombay High Court to this Court to be heard alongwith SLP(C) Nos.10704-10705 of 2016 and SLP(C) CC Nos. 13527-13528 of 2016. The transfer petition is thus allowed. A

25. Coming to SLP(C) Nos.11749-11750 of 2017, in which interim order dated 24.02.2017 and 17.03.2017 have been passed by the Bombay High Court, in view of the order passed in Transfer Petition(C) No.567 of 2017, the PIL No.17 of 2017 is being transferred to this Court. As on the date we do not see any good ground to set aside the aforesaid interim orders, however, PIL No.17 of 2017 having been transferred to be heard by this Court, it is open for the parties to pray for alteration/modification/ variation of the aforesaid interim orders before this Court. The SLP(C) Nos.11749-11750 of 2017 are dismissed subject to above observations. B C

26. In result, Transfer Petition is allowed and the SLPs are dismissed subject to observations as made above. D

Kalpana K. Tripathy Matters disposed of.