

BOMBAY DYEING & MFG. CO. LTD. v. BOMBAY ENVIRONMENTAL ACTION GROUP 61

**(2005) 5 Supreme Court Cases 61**

(BEFORE N. SANTOSH HEGDE AND S.B. SINHA, JJ.)

*a* BOMBAY DYEING & MANUFACTURING CO. LTD. .. Appellant;

*Versus*

BOMBAY ENVIRONMENTAL ACTION GROUP  
AND OTHERS .. Respondents.

*b* Civil Appeal No. 3271 of 2005<sup>†</sup> with IA No. 2, CAs Nos. 3272-73 of 2005<sup>‡</sup>,  
IAs Nos. 7-11, CA No. 3274 of 2005<sup>††</sup>, IA No. 3, CA No. 3275 of 2005<sup>‡‡</sup>, IA  
No. 2, CA No. 3276 of 2005<sup>†††</sup>, IAs Nos. 2-3, CA No. 3277 of 2005<sup>††††</sup>,  
IA No. 2, CA No. 3278 of 2005<sup>†††††</sup> with IA No. 2, decided on May 11, 2005

*c* **Constitution of India — Art. 226 — Interim directions — Factors to be taken into consideration before passing an interim order, particularly in a public interest litigation — Held, the court must consider the question as regards a prima facie case, balance of convenience and the likelihood, if any, of an irreparable loss to the writ petitioner in case of refusal of the injunction sought for — Only in extreme cases can an interim order be passed without hearing the other party but even therefor the parameters laid down in case-law have to be followed — A balance has to be struck between two extreme positions, viz., whether refusal of interim order would render the writ petition infructuous on the one hand, and the enormity of losses and hardships to the other party likely to result from grant of interim order, on the other — In the present case, writ petitioners before High Court (respondents herein) challenging the validity of Regulation 58 (as amended in 2001) of Maharashtra Development Control Regulations, 1991 and also seeking interim orders restraining the authorities concerned from granting any permission or taking any action pursuant to permission already granted for redevelopment of mill lands in question in pursuance of the said DCR 58 — High Court by an interim order permitting NTC to sell, subject to certain conditions, some of its mills where a case of urgency is made out — High Court restraining the Municipal Corporation from approving any further layouts, issue IOD or CC without Court's order — Moreover, High Court, without hearing the parties, directing the State and the Corporation to file a large number of documents — Since transactions relating to some of the mills belonging to NTC had reached a final stage, involving a huge amount either received or to be received from the purchasers, and a stay thereof would frustrate the scheme framed by BIFR rendering NTC liable to pay interest besides causing hardship to other parties including the workers, the said transactions permitted to be completed in terms of BIFR schemes subject to the condition that in the event of success of the writ**

*g* <sup>†</sup> Arising out of SLP (C) No. 7405 of 2005. From the Judgment and Order dated 1-4-2005 of the Bombay High Court in PILWP No. 482 of 2005

<sup>‡</sup> Arising out of SLPs (C) Nos. 7549-50 of 2005

<sup>††</sup> Arising out of SLP (C) No. 10511 of 2005

<sup>‡‡</sup> Arising out of SLP (C) No. 7453 of 2005

*h* <sup>†††</sup> Arising out of SLP (C) No. 7451 of 2005

<sup>††††</sup> Arising out of SLP (C) No. 8362 of 2005

<sup>†††††</sup> Arising out of SLP (C) No. 8378 of 2005

**petition, vacant land available from other mills, if necessary, would have to be offered by way of adjustment — Detailed directions regarding the mode of processing of applications or further applications for grant of sanction for commencement and/or continuation of structures in other cases, issued — The State and the Municipal Corporation directed to file all the relevant documents and in case any document was at a later stage found to have been withheld by them, High Court given liberty to draw adverse inference against them — Town Planning — Maharashtra Regional and Town Planning Act, 1966 (37 of 1966), Ss. 158 and 159 — Maharashtra Development Control Rules, 1967 — Maharashtra Development Control Regulations, 1991, Regn. 58 (as amended in 2001) — Corporate Laws — Sick Industrial Companies (Special Provisions) Act, 1985, S. 18**

In the early eighties, workmen's strike in Bombay led to closure of 58 textile mills of which 25 belonged to the National Textile Corporation (for short "NTC") and 33, to private parties. The said mills together occupied lands admeasuring about 600 acres. Under the Maharashtra Regional and Town Planning Act, 1966, the Development Control Rules (DCR), 1967 were framed. In the year 1991, the Development Control Regulations, 1991 were framed; Regulation 58 whereof permitted modernisation of mills and development of surplus mill lands in the manner specified therein. It also provided for development of mill lands as a part of BIFR-approved rehabilitation schemes and also for modernisation and shifting thereof as well as for reservation of some area for public greens.

However, Regulation 58 did not work satisfactorily, and therefore, it was amended in 2001. The new Regulation 58 envisaged a coherent development of the various mills and their lands and also ensured utilisation of the proceeds of such development in accordance with schemes promulgated by BIFR or for satisfaction of the workers' dues or outstanding public monies. The respondent herein, which was a charitable trust as well as a registered society having as its object the looking after of environment in all its aspects, filed a writ petition in the Bombay High Court questioning the validity of the said regulation. In that writ petition, the State of Maharashtra, the Municipal Corporation of Mumbai, the Maharashtra Housing and Area Development Authority, the National Textile Corporation were impleaded as respondents.

The writ petitioners sought interim orders restraining the State and the Municipal Corporation from granting any permission or taking any action pursuant to permission already granted for the redevelopment of mill lands in pursuance of the provisions of amended DCR 58. They further sought interim orders directing the State and the Municipal Corporation to file all the material documents in that regard.

Before the High Court, the National Textile Corporation contended that it had been carrying on its activities in terms of a scheme framed by BIFR and which had been approved by the Supreme Court by an order dated 27-9-2002. It added that certain financial institutions and others had also acted pursuant to the said scheme. That negotiations for selling seven textile mills had been finalised and that therefore no stay should be granted. The High Court passed two interim orders on 1-4-2005. By one of the said orders, it permitted NTC to confirm the sale of a particular mill as well as in any other case of similar urgency subject to NTC filing an undertaking to comply with any order of interim relief if passed by the Court including the reserving of land in other mills. Moreover, the High

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a Court restrained the Municipal Corporation from approving any further layouts, issuing IOD or CC till further orders. Although no argument was advanced on that behalf, the High Court by the second order directed the State as also the Municipal Corporation to file a large number of documents under fourteen different heads. The said interim orders were challenged in the present appeals by special leave.

b Before the Supreme Court, the appellants contended, inter alia, that: (i) pursuant to amended Regulation 58, the mill owners had borrowed huge sums of money to pay off the outstanding dues, and (ii) within four years since coming into force of the 2001 Regulations, third-party rights had been created, sanctions had been obtained for modernisation of the scheme and the parties had altered their position to a large extent. That therefore, if the interim orders were allowed to operate, the same would result in great hardship.

c The State submitted that if it was required to carry out the directions of the High Court as regards filing of the documents, they would be put to great hardship as truckloads of documents would have to be brought before the High Court. NTC contended that since in respect of its seven mills negotiations had been entered into, they should be allowed to be sold off and in the event of the writ petition succeeding, the order of the Court could be complied with by adjusting vacant land belonging to the other mills.

d On the other hand, the writ petitioner respondents contended, inter alia, that the validity of Regulation 58 having been challenged in the writ petition, the interim orders were justified. More so when they had not directed stoppage of constructions or any other activity in relation whereunto agreements had been entered into or requisite sanction had been granted.

In such circumstances, the Supreme Court

*Held :*

e Before an interim order is passed and in particular in a public interest litigation, the court must consider the question as regards existence of a prima facie case, balance of convenience as also the question as to whether the writ petitioners shall suffer an irreparable injury, if the injunction sought for is refused. The courts normally do not pass an interlocutory order which would affect a person without giving an opportunity of hearing to him. Only in extreme cases, can an ad interim order be passed but even therefor, the parameters as laid down in Supreme Court case-law are required to be complied with. (Para 22)

*Morgan Stanley Mutual Fund v. Kartick Das*, (1994) 4 SCC 225; *Andhra Bank v. Official Liquidator*, (2005) 5 SCC 75 : (2005) 3 Scale 178; *B. Singh (Dr.) v. Union of India*, (2004) 3 SCC 363; *Dattaraj Nathuji Thaware v. State of Maharashtra*, (2005) 1 SCC 590, *relied on*

g The courts, however, have to strike a balance between two extreme positions viz. whether the writ petition would itself become infructuous if interim order is refused, on the one hand, and the enormity of losses and hardships which may be suffered by others if an interim order is granted, particularly having regard to the fact that in such an event, the losses sustained by the affected parties thereby may not be possible to be redeemed. (Para 24)

h *Deoraj v. State of Maharashtra*, (2004) 4 SCC 697; *Raunaq International Ltd. v. I.V.R. Construction Ltd.*, (1999) 1 SCC 492; *Guruvayoor Devaswom Managing Committee v. C.K. Rajan*, (2003) 7 SCC 546; *Chairman & MD, BPL Ltd. v. S.P. Gururaja*, (2003) 8

SCC 567; *Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664; *R & M Trust v. Koramangala Residents Vigilance Group*, (2005) 3 SCC 91, *relied on*

The transactions relating to seven mills belonging to NTC have admittedly reached a final stage. The purchasers of one of the said mills have already paid Rs 16 crores and a sum of Rs 376 crores would pass hands if the transaction is completed. If the transactions in respect of the mills are not allowed to be completed, the scheme framed by BIFR would come to a standstill resulting in accrual of interest payable by the National Textile Corporation to the financial institutions besides other hardships which may be caused to various other persons including the workers. (Para 28) a  
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Therefore, having regard to the facts and circumstances of this case as also the law operating in the field, it is directed that NTC should be permitted to complete the transactions in terms of the scheme framed by BIFR but the same should be subject to the condition that in the event the writ petition succeeded, the vacant land available from other mills, if necessary, should be offered by way of adjustment. (Para 29) c

In some cases, the State might have passed sanction orders. Yet in some other cases, IODs might have been obtained. Yet again, in some cases, commencement certificates might have been granted. In such cases, the statutory authorities should process applications or further applications for grant of sanction required for commencement and/or continuation of structures strictly in accordance with law. Moreover, the scheme, rules, regulations and bye-laws framed under the provisions of the Maharashtra Regional and Town Planning Act, 1966 should be strictly complied while granting permission. The appellants and/or interveners herein, however, before creating any further third-party interest or before raising any constructions pursuant to or in furtherance of any fresh layout, IODs or CCs must put an advertisement in two newspapers having wide circulation in Mumbai; one in English and the other in Marathi vernacular clearly indicating the same. If any agreement is to be entered into in future or any third-party right is to be created, a stipulation should be made therein that the enforcement thereof would be subject to any other or further order which might ultimately be passed by the High Court in the pending proceedings. (Para 30) d  
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Any further constructions and/or creation of any third-party rights by the mill owners would be at their own risk wherefor they would not claim any equity whatsoever and furthermore the same should be subject to the orders of the Court. However, any new application for grant of approval of any layouts, issue of IODs or commencement certifications may be processed but no construction should be carried on pursuant thereto or in furtherance thereof. (Para 31) f

The State of Maharashtra and the Bombay Municipal Corporation should place all the relevant documents before the High Court and in the event it is found at a later stage that they had withheld any document which is relevant the High Court would be at liberty to draw adverse inference against them or pass such other order or orders as may be found necessary. This order has been passed having regard to the fact that the directions to produce documents had been passed without hearing the parties and without taking into consideration the hardship which might be faced by the State and/or the Bombay Municipal Corporation. (Para 35) g  
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Advocates who appeared in this case :

- a G.E. Vahanvati, Solicitor General, F.S. Nariman, Arun Jaitley, K. Parasaran, Mukul Rohatgi, Dr. A.M. Singhvi, Iqbal Chagla, K.K. Singhvi, Colin Gonsalves, R.F. Nariman, T.R. Andhyarujina and Gopal Subramaniam, Senior Advocates (Ravi Kadam, Advocate General for the State of Maharashtra, Percy Chandy, J.J. Bhatt, Ms Zia Modi, Preetesh Kapoor, Eassai Vahanvati, Shailesh, C. Rashmikant, Gopal Jain, R.N. Karanjawala, Ms Ruby Singh Ahuja, Ms Pragya Singh, Ms Kanika Agnihotri, Ms Avantika Keshwani, Ms Manik Karanjawala, Ms B. Sunita Rao, Sushil Kr. Pathak, S.S. Shinde, A.P. Mayee, Janak Dwarkadas, Rishi Agrawal, E.C. Agarwala, Lynn Periera, Gautam Patel, Prag Kabadi, Ms Indu Malhotra, Sharad J., Dheeraj Nair, Vikas Mehta, S.H. Ujjainwala, Pallav Shishodia, D.N. Mishra, Ms Aparna Bhat, P. Ramesh Kumar, Prem Kishan, Vipin M. Benjamin, Ms Purnima Bhat Kak, Pankaj R., U.A. Rana, Ms K. Sumathi, Anil Menon, S. Udaya Kr. Sagar, Ms Bina Madhavan, Ms Susan Zachariah, A. Venayagam, M.N. Shroff, M.S. Girish, Chirag M. Shroff, Pratap Venugopal, Dhawan V., Dilnawaz Bhagalia and K.J. John, Advocates) for the appearing parties.

- c **Chronological list of cases cited** **on page(s)**
1. (2005) 5 SCC 75 : (2005) 3 Scale 178, *Andhra Bank v. Official Liquidator* 72b-c
  2. (2005) 3 SCC 91, *R & M Trust v. Koramangala Residents Vigilance Group* 73d-e
  3. (2005) 1 SCC 590, *Dattaraj Nathuji Thaware v. State of Maharashtra* 72c
  4. (2004) 4 SCC 697, *Deoraj v. State of Maharashtra* 72d-e
  5. (2004) 3 SCC 363, *B. Singh (Dr.) v. Union of India* 72c
  - d 6. (2003) 8 SCC 567, *Chairman & MD, BPL Ltd. v. S.P. Gururaja* 73b-c
  7. (2003) 7 SCC 546, *Guruvayoor Devaswom Managing Committee v. C.K. Rajan* 73b
  8. (2000) 10 SCC 664, *Narmada Bachao Andolan v. Union of India* 73d-e
  9. (1999) 1 SCC 492, *Raunaq International Ltd. v. I.V.R. Construction Ltd.* 73a-b
  10. (1994) 4 SCC 225, *Morgan Stanley Mutual Fund v. Kartick Das* 71f

e The Judgment of the Court was delivered by

**S.B. SINHA, J.**— Leave granted.

f 2. In the early eighties the workmen of the cotton mills situated in the town of Bombay went on a strike resulting in closure of 58 textile mills which together occupied lands measuring about 600 acres. Out of the said 58 mills, 25 belonged to the National Textile Corporation and 33 to private parties.

g 3. In terms of the Maharashtra Regional and Town Planning Act, 1966, the Development Control Rules (DCR), 1967 were framed. The State Government took a policy decision to amend DCR wherefor suggestions/opinion from the public were invited. In the year 1991, the Development Control Regulations, 1991 were framed; Regulation 58 whereof permitted modernisation of mills and development of surplus mill lands in the manner specified therein. It also provided for development of mill lands as a part of BIFR-approved rehabilitation schemes and also for modernisation and shifting thereof.

h 4. The said Regulation 58 sought to deal with the lands appertaining to cotton textile mill pursuant whereto each of the mill owners could give one of the options out of the following:



(i) The mill owners could continue to operate their mills even though it was running into losses. This was the status quo option which entailed no land being surrendered to MHADA, public greens. a

(ii) The second option entailed retaining the outer shell of the mill structures and building commercial structures within the mill structure.

(iii) The third option entailed two steps. The first step was raising of construction within the old structure and the second step was to construct on the part of open spaces.

(iv) The fourth option ensured demolition of the entire old structures and sharing the entire mill lands in approximately three equal proportions. The first part would remain with the mill owner which he would be entailed to redevelop. The second share would go to MHADA and the third share would go to public greens. b

5. Pursuant to or in furtherance of the said regulation, only two mills exercised the second option and three mills the third one. Nobody opted for the fourth as in terms thereof the mill owners were required to surrender a major portion of their land. As allegedly, the said regulation did not work satisfactorily as no significant amount of land either for public greens or for MHADA came to be surrendered, it was not implemented. c

6. It is stated that some mills endeavoured to develop the lands in accordance with the said regulation but the same did not achieve the purpose for which Regulation 58 was brought into force. In the aforementioned situation, as would be noticed supra, Regulation 58 was amended in 2001. d

7. The respondents filed a writ petition in the Bombay High Court questioning the validity of the said regulation. Some interim orders have been passed therein which are in question in these appeals. The appellants contend: e

(i) As the scheme containing the 1991 Regulations was not found to be workable, committees were appointed and in furtherance of their recommendations a new Regulation 58 was introduced in the year 2001. The new Regulation 58 envisaged a coherent development of the various mills and their lands in Mumbai and also ensured that the proceeds of such development are utilised in accordance with either the schemes promulgated by BIFR and/or for the satisfaction of the dues of the workers and/or for the satisfaction of the large outstanding public monies by way of loans from financial institutions and banks under the supervision of a Monitoring Committee. Regulation 58 of 2001 while providing for a coherent development also took care of the provision for open spaces, public amenities and public housing. The entire development is to be overseen by a Monitoring Committee which oversees an escrow account to ensure financial accountability, their payment to workers/financial institution, etc. and is headed by a retired High Court Judge appointed under the said Regulation 58 of 2001. Pursuant to or in furtherance of the new regulation, the mill owners allegedly borrowed huge sums of money i.e. Rs 2002 crores from the f  
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a banks and financial institutions to pay off the dues of the workers and also the dues of the others.

(ii) Bombay Dyeing & Manufacturing Co. Ltd. alone after taking advances from the financial institutions paid Rs 120 crores to the workers and is committed to pay a further sum of Rs 50 crores.

b (iii) Within a span of four years since coming into force of the 2001 Regulations, third-party rights have been created, sanctions have been obtained for modernisation of scheme and the parties have altered their position to a large extent.

8. The said regulation of 2001 was clarified in the year 2003. With a view to have a relook at Regulation 58, a nine-member committee with Shri Deepak Parekh, Chairman, HDFC as its Chairman was appointed; the terms of reference whereof are:

c “(1) To examine the feasibility of an integrated development of mills land.

(2) To study the existing DCR and suggest ways so that enough land is made available for open use/public housing without jeopardising workers’/financial institutions’ interests.”

d However, admittedly no recommendation has been made by the said Committee nor its term has been extended.

e 9. The first respondent is a public charitable trust registered both under the Bombay Public Trusts Act, 1950 as also a society registered under the Societies Registration Act. Its aims and objects inter alia are to look after the environment in all aspects and it had been carrying on activities therein. The respondent filed a writ petition on or about 18-2-2005 in the nature of a public interest litigation in the High Court of Judicature at Bombay praying inter alia for the following reliefs:

f “(a) For an appropriate writ, order or direction striking down the impugned order dated 20-3-2001 (Exhibit ‘C’, hereto) and consequent amendment to DC Regulation 58, in particular, clauses A-6 and C-1(5) of Schedule 1 of the impugned order dated 20-3-2001 as ultra vires the MRTP Act, illegal, unconstitutional, void ab initio and non est.

(b) For a writ of mandamus, or a writ in the nature of mandamus or any other appropriate writ, order or direction, ordering and directing the 1st and 2nd respondents (and their servants, agents or officers):

g (i) to withdraw/cancel the impugned order dated 20-3-2001 and the consequent amendment to DCR 58;

h (ii) to take such action as is necessary in law to amend DCR 58 to ensure that the total amount of space available for redevelopment in respect of which the percentagewise allocations are to be determined, is the open land and the land available after demolition of existing structures;

(iii) to forbear and desist from granting any permission, in accordance with amended DCR 58 (including Respondents 3 and 4) for the redevelopment of the mill lands; a

(iv) restraining them from in any way acting in furtherance of the report submitted by NTC and prepared by 'Team One'.

(c) For a writ of mandamus or a writ in the nature of a writ of mandamus directing Respondents 1 and 2 (and their servants, agents or officers) to undertake preparation of plan for comprehensive development of appropriately delineated Textile Mill District so as to provide for the comprehensive development of these mill lands in an integrated manner in furtherance of the recommendations made by the Charles Correa Expert Committee Report submitted in August 1996. b

(d) That pending the hearing and final disposal of this petition, Respondents 1 and 2 should be restrained by an appropriate writ, order, direction or injunction from granting any permission or taking any action pursuant to permission already granted for the redevelopment of mill lands (including Respondents 3 and 4) in pursuance of the provisions of amended DCR 58. c

(e) That pending the hearing and final disposal of this petition, Respondents 1 and 2 should be ordered and directed by the Hon'ble Court to produce on affidavit all the material documents and information that have been submitted to Respondents 1 and 2 by Respondents 3 and 4 as part of their application for permission to develop the said land or any part thereof and any other material and information available to Respondents 1 and 2 which it has considered/likely to consider in relation to the grant of permission to Respondents 3 and 4 for the development of the said mill land. d

(f) That pending the hearing and final disposal of this petition, Respondents 1 and 2 should be ordered and directed by this Hon'ble Court to produce on affidavit all the material documents and information that have been submitted to Respondents 1 and 2 by privately owned mills as part of their applications for permission to develop their respective textile mill lands, and any other material information and documents that Respondents 1 and 2 considered in relation to the grant of permission to them for the development of their respective mill lands. e

(g) That pending the hearing and final disposal of this petition, Respondents 1 and 2 should be ordered and directed to appoint a Special Planning Authority or any other supervisory body/committee to supervise the comprehensive/integrated development of mill lands, including private mill lands (that fall within the purview of DCR 58), in furtherance of the recommendations of the Charles Correa Expert Committee Report submitted in August 1996. f

(h) For ad interim reliefs in terms of prayer clauses (d) to (g). g

(i) For such further and other reliefs and orders as this Hon'ble Court deem fit in the nature and circumstances of this petition." h



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**10.** In the said writ petition, apart from the State of Maharashtra, the  
*a* Municipal Corporation of Mumbai, the Maharashtra Housing and Area  
Development Authority, the National Textile Corporation North Maharashtra  
and South Maharashtra were impleaded as respondents. Before the said High  
Court, a large number of mill owners and others who allegedly have invested  
a huge sum on the lands of the mill owners or otherwise interested in  
implementation of Regulation 58 of 2001 filed applications for their  
*b* impleadment as parties therein but the same was opposed by the respondents.  
The applicants, however, were allowed to intervene.

**11.** It was, however, stated at the Bar that whereas 6-4-2005 was fixed for  
filing responses by the interveners, but after hearing the matter for three days  
viz. 29-3-2005 to 31-3-2005, the impugned orders were passed.

**12.** Before the High Court, the National Textile Corporation inter alia  
*c* contended that it had been carrying on its activities in terms of a scheme  
framed by BIFR and which has been approved by this Court by an order  
dated 27-9-2002 in the following terms:

*d* “We have been informed that BIFR has already formulated eight  
schemes which stand approved by all concerned and agencies. But the  
schemes as sanctioned by BIFR be implemented. The special leave  
petition and the transfer petitions stand disposed of accordingly.”

**13.** The National Textile Corporation contends that out of 25 mills 17/18  
mills have closed down. Approximately 14,800 employees have been  
relieved. Payment of Rs 643.94 crores has been made to the employees.

**14.** It has further been contended that several financial institutions and  
*e* others have acted pursuant to or in furtherance of the said scheme. It is stated  
that negotiations for selling seven textile cotton mills have been finalised and,  
thus, it was submitted that no stay should be granted.

**15.** The High Court passed two interim orders on 1-4-2005. As regards  
the National Textile Corporation, it was directed:

*f* “On behalf of NTC the learned counsel submits that they should be  
allowed to proceed with the sale of Jupiter Mills. The matter is pending  
before this Court. However, considering the urgency which counsel make  
out any further as NTC has 25 mills the request for confirming the sale  
can be agreed to, subject to the following conditions:

*g* (i) NTC will file an undertaking in this Court, that on the Court  
passing an order on interim relief they will comply with the order of  
the Court including if a situation arises of reserving the land in the  
other mills for which development is sought in terms of the order that  
may be passed by the Court. On such undertaking being filed, it is  
open to NTC to confirm the sale of Jupiter Mills.”

It was further directed:

*h* “(ii) Considering that the matter has now been adjourned to  
20-4-2005 Respondent 2 Municipal Corporation directed not to approve  
any further layouts, issue IOD, or CC without the permission of this  
Court or till further orders.”

**16.** It is not in dispute that although no argument was advanced in that behalf, the Division Bench by a separate order directed the State as also the Bombay Municipal Corporation to file a large number of documents under fourteen different heads. a

**17.** The learned counsel appearing on behalf of the appellants inter alia would submit:

(i) Keeping in view the fact that the writ petitioners did not file any objection or suggestions before Regulation 58 was given a concrete shape, it was not entitled to any interim relief. b

(ii) Regulation 58 being a subordinate legislation, a public interest litigation should not have been entertained questioning its validity.

(iii) In any event, as within the interregnum of four years, the appellants as also the others have invested a huge sum of money, the interim order ought not to have been passed as it would affect the interests inter alia of (i) the workers, (ii) the financial institutions, (iii) the mill owners, and (iv) the third-party purchasers. c

(iv) No interim order in any view of the matter could have been passed without impleading the interested parties and permitting them to file their affidavits.

(v) Several parties have obtained layout, IOD or commencement certificates for different stages and in that view of the matter if the interim order is allowed to operate, the same would result in great hardship. d

**18.** The learned Solicitor General appearing on behalf of the State of Maharashtra further submitted that if the State of Maharashtra is asked to carry out the directions of the High Court as regards filing of the documents, they will be put to great hardship as truckloads of documents will have to be brought before the High Court. e

**19.** Mr Parasaran and Mr Rohatgi, learned Senior Counsel appearing on behalf of the National Textile Corporation would contend that keeping in view the fact that in respect of seven mills, negotiations have been entered into, they should be allowed to be sold off and in the event, the writ petition succeeds, the order of the Court can be complied with by adjusting vacant land belonging to the other mills. f

**20.** Mr Iqbal Chagla, learned Senior Counsel appearing on behalf of the writ petitioner respondents, on the other hand, would contend that in terms of the 1991 Regulations, at least 200 acres out of 600 acres of land situate in the middle of the city would have been made available providing for large space for the inhabitants of the town and further 200 acres of land would have been available to MHADA for construction of residential houses for the weaker sections. Integrated development of the town of Bombay, the learned counsel would contend, is imperative having regard to the fact that whereas in other metros, three to four acres of open space is available for one thousand residents, in the town of Mumbai, it is only 0.03 acres per thousand. It was contended that in terms of Section 37 of the Maharashtra Regional and Town Planning Act, 1966, the State of Maharashtra itself imposed a ban in 1996 on constructions on the ground that no final decision had been taken in that g  
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a behalf and in that view of the matter there is absolutely no reason as to why the impugned order cannot be sustained inasmuch as the validity of Regulation 58 has been questioned in the writ petition. It was pointed out that the State of Maharashtra itself issued clarification of the 2001 Regulations in March 2003 in terms whereof allotment in favour of MHADA came to an end. It had been pointed out that the Bombay Municipal Corporation and MHADA had adopted resolutions asking the State Government to have a relook in the matter and in January 2005, the State appointed a committee therefor. In any event, the learned counsel would contend that the High Court by reason of the impugned order having not directed stoppage of constructions or any other activity in relation whereto agreements have been entered into or requisite sanctions have been granted, the impugned orders should not be interfered with.

c 21. The learned counsel would urge that the undertaking directed to be given by the National Textile Corporation is commensurate with the suggestion given by Mr Parasaran before this Court.

d 22. This Court at this stage is concerned with an interim order passed by the High Court. The writ petition is still to be heard. Affidavits between the parties are yet to be exchanged. The objection as regards maintainability of the writ petition is also required to be finally determined by the High Court itself. This Court at this stage cannot, thus, enter into all the contentious questions raised in these appeals. But, there cannot be doubt or dispute whatsoever that before an interim order is passed and in particular in a public interest litigation, the court must consider the question as regards existence of a prima facie case, balance of convenience as also the question as to whether the writ petitioners shall suffer an irreparable injury, if the injunction sought for is refused. The courts normally do not pass an interlocutory order which would affect a person without giving an opportunity of hearing to him. Only in extreme cases, an ad interim order can be passed but even therefor, the following parameters as laid down by this Court in *Morgan Stanley Mutual Fund v. Kartick Das*<sup>1</sup> are required to be complied with: (SCC pp. 241-42, para 36)

f “36. As a principle, ex parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of ex parte injunction are—

(a) whether irreparable or serious mischief will ensue to the plaintiff;

g (b) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;

(c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented;

h

(d) the court will consider whether the plaintiff had acquiesced for some time and in such circumstances it will not grant ex parte injunction;

(e) the court would expect a party applying for ex parte injunction to show utmost good faith in making the application;

(f) even if granted, the ex parte injunction would be for a limited period of time;

(g) general principles like prima facie case, balance of convenience and irreparable loss would also be considered by the court.”

(See also *Andhra Bank v. Official Liquidator*<sup>2</sup>.)

23. The courts while passing an order of interim injunction must also consider the parameters of a public interest litigation as laid down by this Court in *B. Singh (Dr.) v. Union of India*<sup>3</sup> and *Dattaraj Nathuji Thaware v. State of Maharashtra*<sup>4</sup>.

24. The courts, however, have to strike a balance between two extreme positions viz. whether the writ petition would itself become infructuous if interim order is refused, on the one hand, and the enormity of losses and hardships which may be suffered by others if an interim order is granted, particularly having regard to the fact that in such an event, the losses sustained by the affected parties thereby may not be possible to be redeemed.

25. In *Deoraj v. State of Maharashtra*<sup>5</sup> this Court opined: (SCC p. 703, para 12)

“12. Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of the main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong prima facie case — of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of the case totally in favour of the applicant may persuade the court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing

2 (2005) 5 SCC 75 : (2005) 3 Scale 178

3 (2004) 3 SCC 363

4 (2005) 1 SCC 590

5 (2004) 4 SCC 697

BOMBAY DYEING & MFG. CO. LTD. v. BOMBAY ENVIRONMENTAL ACTION GROUP 73  
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a and would cause extreme hardship. The conduct of the parties shall also have to be seen and the court may put the parties on such terms as may be prudent.”

b 26. In *Raunaq International Ltd. v. I.V.R. Construction Ltd.*<sup>6</sup> this Court held that in appropriate cases, the petitioners should be put on appropriate terms such as providing an indemnity or an adequate undertaking to make good the loss or damage in the event the PIL filed is dismissed. (See also *Guruvayoor Devaswom Managing Committee v. C.K. Rajan*<sup>7</sup>.)

b 27. The courts are also required to consider the decisions of this Court relating to public interest litigation vis-à-vis reason of delay in bringing the same as noticed by this Court in *Chairman & MD, BPL Ltd. v. S.P. Gururaja*<sup>8</sup> in the following terms: (SCC pp. 588-89, para 32)

c “32. In the facts and circumstances, we do not find that the Board and the State had committed any illegality which could have been a subject-matter of judicial review. The High Court in our opinion committed a manifest error insofar as it failed to take into consideration that the delay in this case had defeated equity. The allotment was made in the year 1995. The writ application was filed after one year. By that time the Company had not only taken possession of the land but also made sufficient investment. Delay of this nature should have been considered d by the High Court to be of vital importance.”

(See also *Narmada Bachao Andolan v. Union of India*<sup>9</sup>, SCC at p. 762 and *R & M Trust v. Koramangala Residents Vigilance Group*<sup>10</sup>, SCC at pp. 112-13.)

e 28. So far as transactions relating to seven mills belonging to the National Textile Corporation are concerned, including sale of Jupiter Mills, it is not in dispute that transactions have reached a final stage. The purchasers of Jupiter Mills have already paid Rs 16 crores and a sum of Rs 376 crores would pass hands if the transaction is completed. If the transactions in respect of the mills are not allowed to be completed, the scheme framed by BIFR would come to a standstill resulting in accrual of interest payable by the National Textile Corporation to the financial institutions besides other f hardships which may be caused to various other persons including the workers.

g 29. We, therefore, having regard to the facts and circumstances of this case as also the law operating in the field, are of the opinion that interest of justice would be subserved if the National Textile Corporation is permitted to complete the transactions in terms of the scheme framed by BIFR but the same shall be subject to the condition that in the event, the writ petition ultimately succeeds, the vacant land available from other mills, if necessary, shall be offered by way of adjustment.

h 6 (1999) 1 SCC 492  
7 (2003) 7 SCC 546  
8 (2003) 8 SCC 567  
9 (2000) 10 SCC 664  
10 (2005) 3 SCC 91



**30.** In some cases, the State might have sanctioned DCR. Yet in some other cases, IODs might have been obtained. Yet again, in some cases, commencement certificates might have been granted. In such cases, the statutory authorities shall process applications or further applications for grant of sanction required for commencement and/or continuation of structures strictly in accordance with law. It is stated that in some cases such applications may be entertained although the period of lease has expired. We do not think that the statutory authorities shall be so callous so as to grant permission in favour of a person who does not have ownership over the land in question. We furthermore have no doubt that the scheme, rules, regulations and bye-laws framed under the provisions of the Maharashtra Regional and Town Planning Act, 1966 shall be strictly complied while granting permission. We have furthermore no doubt that the Committee appointed in terms of the regulation shall grant its approval only in accordance with the extant Regulations. The appellants and/or interveners herein, however, before creating any further third-party interest or before raising any constructions pursuant to or in furtherance of any fresh layout, IODs or CCs must put an advertisement in two newspapers having wide circulation in Mumbai; one in English and the other in Marathi vernacular clearly indicating the same. If any agreement is to be entered into in future or any third-party right is to be created, a stipulation shall be made therein that the enforcement thereof shall be subject to any other or further order which may ultimately be passed by the High Court in the pending proceedings.

**31.** Any further constructions and/or creation of any third-party rights by the mill owners will be at their own risk wherefor they would not claim any equity whatsoever and furthermore the same shall be subject to the orders of the Court. However, any new application for grant of approval of any layouts, issue of IODs or commencement certifications may be processed but no construction shall be carried on pursuant thereto or in furtherance thereof.

**32.** It appears that there exists some dispute between two rival trade unions. Their inter se disputes representing different sections of workers, if any, may be determined by an appropriate forum in an appropriate proceeding.

**33.** We are informed that the Division Bench of the Bombay High Court had fixed hearing of the writ petition in the last week of August, 2005. We would request the High Court to consider the desirability of preponing the date so that the writ petition may be heard out and disposed of at an early date and preferably by 31-7-2005.

**34.** The impleaded parties and/or interveners may file their affidavits before the High Court within three weeks from date.

**35.** The State of Maharashtra and the Bombay Municipal Corporation shall place all the relevant documents before the High Court and in the event, it is found at a later stage that they have withheld any document which is relevant, the High Court would be at liberty to draw adverse inference against them or pass such other order or orders as may be found necessary. We have passed this order having regard to the fact that the directions to produce documents have been passed without hearing the parties and without taking

into consideration the hardship which may be faced by the State and/or the Bombay Municipal Corporation.

- a* **36.** We, by our order dated 18-4-2005 directed the matter to be placed on 23-8-2005 for hearing but keeping in view the fact that in these appeals we were called upon to deal with an interim order, we are of the opinion that no purpose would be served in keeping the matters pending. We, therefore, dispose of these appeals and the intervention applications on the aforementioned terms.
- b* **37.** Having regard to the directions issued, it is not necessary to pass any separate orders on the applications for impleadment and/or intervention.
- 38.** No order as to costs.

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- c* (BEFORE N. SANTOSH HEGDE, B.P. SINGH AND S.B. SINHA, JJ.)  
ANDHRA BANK .. Appellant;  
*Versus*  
OFFICIAL LIQUIDATOR AND ANOTHER .. Respondents.

- d* Civil Appeal No. 1321 of 2003<sup>†</sup>, decided on March 14, 2005
- e* **A. Corporate Laws — Companies Act, 1956 — Ss. 529-A, 529 and 446 — Winding up — Inter se priority between “workmen’s dues” [as mentioned in S. 529-A(1)(a)] and debts due to secured creditors [as mentioned in S. 529-A(1)(b)] — Award of payment of past dues of workmen on ad hoc basis under S. 446 over claims of secured creditors — Propriety of — Held, said claims of secured creditors would rank *pari passu* with those of the workmen, and the observation to the contrary in *Allahabad Bank case*, (2000) 4 SCC 406 in para 76, did not lay down the correct law — Company in liquidation — Sale of assets of, as going concern — Buyer entering into settlement with workers — Workers being paid substantial part of past and current dues — Appellant Bank as secured creditor standing outside winding up and its suit being transferred to DRT — Company Court issuing direction under S. 446 directing the workmen’s past dues to be paid on an ad hoc basis, without considering claim of appellant Bank — Held, not proper — Moreover, since no reasons had been given for the said direction, contentions of parties had not been noticed and the jurisdictional question had not been addressed, said direction could not be sustained — Debt and Financial Laws — Recovery of Debts Due to Banks and Financial Institutions Act, 1993, S. 19(19) (Paras 22, 23, 25, 26 and 28 to 30)**
- f*
- g* **B. Corporate Laws — Companies Act, 1956 — Ss. 446, 529-A and 529 — Winding up — Power of court under S. 446 — Scope and procedure for exercise of — Priorities amongst creditors of company — Power of determination of, if included — Held, though power under S. 446 is wide, it can only be exercised upon consideration of the respective contentions of the parties raised in a suit or a proceeding or any claim made by or against the**
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<sup>†</sup> From the Judgment and Order dated 19-3-2002 of the Calcutta High Court in APO No. 1082 of 1993 : (2002) 2 Cal HN 412