

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.176 OF 2015
(For cancellation of bail)**

Mrs.Indu Dharma Kekane & ors .Applicants

V/s.

The State of Maharashtra & ors .Respondents

Mr.V.R.Shinde, Advocate, for the Applicants

Mr.Y.M.Nakhwa, APP, for the Respondent No.1 -
State

Mr.V.V.Purwant, Advocate, for the Respondent
Nos.2 to 5

CORAM : REVATI MOHITE DERE, J.

DATE : 17TH APRIL, 2015

P.C.

. Heard the learned counsel for the applicants, the learned APP for the respondent No.1 – State & the learned counsel for the respondent Nos.2 to 5.

2. By this application, the applicants seek cancellation of the interim protection granted by the 3rd Additional Sessions Judge,

Thane vide order dated 10.07.2012 in ABA No.1091 of 2012.

3. The learned counsel for the applicants submitted that the Advocate for the applicants had made submissions before the learned Sessions Judge, that the respondents were ready to return the amounts, they had received from the proposed flat owners with interest or alternatively, they were ready to handover possession of the flats, in whatever conditions to them. He submitted that after the interim order was passed, no steps were taken by the applicants to make good their promise and assurance nor have they been attending the Vashi Police Station as directed by the Sessions Court vide interim order dated 10.07.2012. He further submitted that the applicants/original complainants were constrained to file several applications seeking cancellation of the order granting interim protection to the respondents. He

submits that almost 11 to 12 such applications have been filed by the applicants/original complainants, however, the learned Judge has not passed any orders on the applications. He further submitted that during the interregnum, after the grant of interim protection, the respondents have created 3rd party rights and have given Power of Attorney to other contractors to construct the buildings. He further submits that the payments made by cheques to the complainants have also been dishonoured. The learned counsel for the applicants relied on the following Judgments of the Supreme Court and Bombay High Court in support of his contention.

(a) ***Pooja Bhatia vs. Vishnu Narain Shivpuri & Anr. in Cri.Appeal No.585 of 2014.***

(b) ***Kanwar Singh Meena vs. State of Rajasthan & Anr. in Cri.Appeal No.1662 of 2012.***

(c) ***S.E.B.I. vs. Sahara India Real Estate Corp. Ltd. & Ors. in Contempt Petition (Civil) No.412 of 2012.***

(d) ***Mahesh Thakkar alias Mahes Manubhai Gadhai vs. State of Maharashtra & Anr.,*** reported in ***2007 ALL MR (Cri.) 1127*** in support of his contention.

4. The learned APP on the instructions of the investigating officer, who is present in the Court also submits, that despite directions of the learned Sessions Judge vide order dated 10.07.2012, the respondents have not attended the concerned police station on several dates. He submits that the investigating officer has also filed a report in the concerned Court seeking cancellation of the interim protection granted to the applicants. The learned counsel for the respondents submits that the respondents are

making efforts to make good their promises of either, returning the amounts or giving flats in the alternative, to the complainants. He refutes the submissions advanced by the learned counsel for the applicants and the learned APP.

5. It appears that three years have passed and the said application, being ABA No.1091 of 2012 is still pending in the Court of the learned Sessions Judge. Despite several applications having been filed for cancellation of the interim protection granted in ABA No.1091 of 2012, the learned Sessions Judge has not considered the said applications.

6. Considering the peculiar facts & circumstances of the case, the learned Sessions Judge is directed to hear the applications seeking cancellation of the interim protection granted to the respondents,

filed by several complainants, as expeditiously as possible and preferably within a period of four weeks from the date of receipt of this order.

7. The Sessions Judge to decide the applications, after hearing the parties on its own merits and in accordance with law, uninfluenced by any observation passed in this application. It is made clear, that this Court has not considered the application on merits, since the applications seeking the same relief are pending before the learned Sessions Judge, Thane.

8. The Sessions Judge to consider the submissions of the parties, including the Judgments relied upon by the applicants.

9. It is informed that the next date in the trial Court is 06.05.2015. The present applicants are granted liberty to move the

Sessions Court for filing an application for preponing the hearing of this application.

10. Registry is directed to communicate the said order to the learned Sessions Judge, Thane, by fax.

11. The application is disposed of accordingly.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)