

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1365 OF 2016
AND
CIVIL APPLICATION NO.119 OF 2016
AND
CIVIL APPLICATION NO.120 OF 2016
IN
WRIT PETITION NO.12264 OF 2015

...
 Kamlakar Patil & ors. ...Applicants

In the matter between

Kamlakar Patil ...Petitioner

v/s.

The State of Maharashtra & ors. ...Respondents

WITH

CIVIL APPLICATION NO.1366 OF 2016
AND
 CIVIL APPLICATION (ST) NO.35691 OF 2015
IN
 WRIT PETITION (ST) NO.27834 OF 2015

...
 Pankaj Vishwakarma & ors. ...Applicants

v/s.

The State of Maharashtra & ors. ...Respondents

...

Mr.Saurabh Dilip Butala for the Applicants.

Mrs.M.P.Thakur, AGP for Respondent No.1.

Ms.Shyamali Gadre with Mr.Ankit Kulkarni & Mr.Abhijit Deshmukh i/b Little & Co. for Respondent No.2.

Mr.M.S.Deshpande, Court Receiver, High Court, Bombay present.

...

CORAM : A.S.OKA &

A.A. SAYED, JJ.

DATED : 9 JUNE 2016

P.C.:

Civil Application No.1365 of 2016 has been filed by the Writ Petitioners in Writ Petition No.12264 of 2015. The said Writ Petition was disposed of finally by the judgment and order dated 11 December 2015. In the said Writ Petition, the challenge was to notices issued under sub-section (1) of Section 53 of the Maharashtra Regional & Town Planning Act, 1966 (for short "MRTP Act"). Notices were in respect of a building known as "Kamalakar Apartments" consisting of Ground + Four Floors situated at Ganpatipada, Village Digha, Navi Mumbai. The notices were for demolition of the said building as admittedly the entire building is illegal. The present Applicants submitted undertakings to the Court in the said Writ Petition thereby agreeing to vacate the premises allegedly in their possession in the said building "Kamalakar Apartments" on or before 31 December 2015. They gave their consent for appointment of the Court Receiver, High Court, Mumbai as the Receiver in respect of the premises occupied by them. Accordingly, by the judgment and order dated 11 December 2015, undertakings of the Applicants were accepted. The Court Receiver, High Court, Bombay was appointed as the Receiver of the said building and was directed to take symbolic possession of all the premises in the said building. A direction was given that in the event the Applicants fail to vacate and hand over the possession of their respective premises by 31 December 2015, the

Court Receiver shall take forcible possession of the premises in possession of the Applicants. Further direction was issued to the Court Receiver to place the Maharashtra Industrial Development Corporation (for short "MIDC") in possession of the premises. The building has been admittedly constructed on the land vesting in MIDC.

2. Admittedly the Applicants have not vacated the premises. After disposal of the main Writ Petition filed by the Applicants, the State Government came out with two policies for regularization of all the illegal structures in the State of Maharashtra. There was a direction issued by this Court in PIL No.80 of 2013 and other connected PILs that no such policy of regularization shall be implemented without the leave of the Court. Initially submissions were made by the learned Advocate General on the basis of first policy for grant of such leave. Later on, the learned Advocate General informed the Court that the policy was not approved by the Cabinet. Thereafter, by filing an affidavit, the State Government came out with one more policy. Submissions were canvassed to grant a leave to implement the policy. By judgment and order dated 27 April 2016, this Court held that the policy was arbitrary and illegal. Notwithstanding the rejection of the policy, as the learned Government Pleader made a statement that the State Government is likely to come out with one more policy, this Court postponed

the action of demolition, except the action in respect of “Ambika Building”, till 31 May 2016. Civil Application No.1365 of 2016 contains a prayer for postponing the demolition of the building “Kamlakar Apartments” for a period of four months on the ground that the State Government is likely to come out with the third policy.

3. Civil Application No.1366 of 2016 has been filed by the Petitioners in Writ Petition(st) No.27834 of 2015. The Applicants are claiming to be occupants of building “Pandurang Apartments” at Digha, Navi Mumbai, who challenged the notices issued under sub-section (1) of Section 53 of the MRTP Act. The said building is admittedly illegal, which is constructed on the land vesting in M.I.D.C. As in the case of the Applicants in Civil Application No.1365 of 2016, undertakings were also given by the Applicants in Civil Application No.1366 of 2016 to vacate the premises by 31 December 2015. By accepting the undertakings, the protection against the demolition was granted till 31 December 2015. Even in this Application, a prayer is for postponing the demolition.

4. By accepting the undertakings of the Applicants, both the Petitions challenging the notices of demolition were rejected by this Court. The said orders have become final.

5. Yesterday, when these Applications were called out, the learned Government Pleader stated that the State is in the process of formulating a new policy. Today, learned AGP states that she has no instructions to make a statement as regards the outer limit within which the policy will be placed before the Court.

6. The Applicants are occupants of multi-storied RCC buildings constructed in Navi Mumbai. Admittedly buildings are completely unauthorized. The Applicants have given unconditional undertakings to vacate the premises in their possession by 31 December 2015. Already they have got extension of more than five months. After having unconditionally accepted the fact that they have taken flats in the RCC buildings which are completely unauthorized and that they would vacate their respective flats/premises by 31 December 2015, now the Applicants cannot get further extension. We may note here that though there are no equities in favour of the Applicants and that the Applicants are not entitled to any extension, we suggested to the learned Counsel for the Applicants that if the Applicants are willing to give fresh undertakings to vacate within a reasonable time by stating that they would vacate the premises without claiming any benefit of the policy which may be formulated by the State Government, today on instructions, the learned Counsel for the Applicants

states that the Applicants are not in a position to give any such undertaking.

7. To summarize, the Applicants who are occupants of illegal multi-storied RCC buildings were bound to vacate the premises in their respective possession by 31 December 2015, in view of clear unconditional undertakings given by them. Till today they have not vacated the premises. They are not even willing to file a fresh undertaking to enable the Court to grant a reasonable time to them on purely humanitarian grounds.

8. There is no valid policy by the State Government, which exists, which can regularize the subject multi-storied RCC buildings. By granting further extension without specific undertaking of the Applicants, the Court cannot encourage the Applicants to commit gross breach of the undertakings given by them to the Court.

9. Therefore, no relief can be granted to the Applicants. Accordingly, we pass the following order:

ORDER

(i) Civil Application No.1365 of 2016 and Civil Application No. 1366 of 2016 are rejected;

(ii) In view of this order other pending Civil Applications namely Civil Application No.119 of 2016, Civil Application No.120 of 2016 and Civil Application (st) No.35691 of 2015 are also rejected;

10. At this stage the learned Counsel appearing for the Applicants seeks protection with a view to approach the higher Court.

11. The protection granted to the Applicants has expired on 31 May 2016. The orders rejecting the Writ Petitions filed by the Applicants have attained finality. As per the undertakings of the Applicants, they are bound to vacate by 31 December 2015. The orders dismissing their Writ Petitions were not challenged by the Applicants. Writ Petition No.12264 of 2015 was dismissed on 11 December 2015 and Writ Petition (st) No.27834 of 2015 was dismissed on 28 October 2015. Granting further time will virtually allow the Applicants to enjoy the possession which they could not have enjoyed from 1 January 2016. The Applicants have already committed a breach of the undertakings. Therefore, the Receiver will have to immediately take physical possession of the premises of the Applicants.

12. Learned Counsel for the MIDC, on instructions, stated that after taking over possession of the buildings from the Court Receiver, MIDC may take 3 to 4 weeks' time to make arrangement for demolition. Therefore, there is no need to grant any relief to the Applicants. The oral prayer made by the Counsel for the Applicants is rejected.

(A.A. SAYED, J.)

(A.S.OKA, J.)