

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION ST NO. 27834 OF 2015

Pankaj R. Vishwakarma and Ors. ... Petitioners

Versus

The State of Maharashtra and Ors. ... Respondents

Mr. Saurabh Dilip Butala I/by Mr. Anwar Landge for the petitioners.

Mrs. M.P. Thakur, AGP for respondent nos. 1, 4 and 5. for the respondent.

Ms. Shyamli Gadre a/w Mr. Ankit Kulkarni I/by Little & Co. for the respondent no. 2.

Mr. S.S. Deshpande, Court Receiver, High Court, Bombay present in person.

**CORAM : A.S.OKA AND
V.L.ACHLIYA, JJ.
DATED : 28th OCTOBER, 2015**

P.C. :-

1. Heard the learned counsel for the petitioners and the learned AGP for the first respondent. The learned Court receiver is personally present in the Court. We have heard the learned counsel representing the Maharashtra Industrial Development Corporation(MIDC). The petitioners have challenged the notices issued by the second respondent MIDC under sub section (1) of section 53 of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act"). The notices are issued for the demolition of the building Pandurang Apartments at Digha in Navi Mumbai. The Petitioners are occupying the premises in the said building.

2. On the earlier date, the learned counsel for the petitioners made a statement that the petitioners have accepted the fact that the building which is the subject matter of this petition namely Pandurang Apartments/ Pandurang building at Digha in Navi Mumbai is completely unauthorized and that they will give an unconditional undertaking to vacate the premises in the building by 31st December, 2015. Today the learned counsel for the petitioners has tendered the undertakings of the petitioners (total 17 undertakings). He states that the undertakings of the occupants of all the premises in the said building have been filed on record. All the undertakings have been affirmed on oath before a Notary Public. The said 17 undertakings are taken on record and marked "A1" collectively for the purpose of identification. The Registry shall serially paginate the Undertakings.

3. By way of illustration, we are reproducing the undertaking of one Shri Pralhad Shridhar Mokashi occupying flat/room Nos. 01,02,and 03 in the said building. What he has stated in the said undertaking is reproduced thus :

"2. I hereby undertake to unconditionally vacate the said premises i.e. Room No. 01,02,03 Pandurang Building, Digha, Navi Mumbai, along with my family members on or before 31/12/2015 and handover the vacant and peaceful possession to the

3. I say that in the meantime I do not have objection to appoint court receiver in respect of the said premises. The symbolic possession of the said premise will be the Court Receiver. I hereby undertake that I will not transfer and/or

alienate the said premises and will not part with the possession of the said premises.

4. I say that if I failed to vacate the premises on or before 31/12/2015, court receiver/MIDC can forcibly vacate me and any family members and take the possession of the premises with the help of police.”

4. The learned counsel for the petitioners states that all the undertakings are identically worded. We accept the said statement and the said undertakings. We direct that the Court Receiver, High Court, Mumbai is hereby appointed as the Court Receiver of the said building who shall take over the symbolic possession of all the premises in the said building. In view of the undertakings, the demolition of the building Pandurang Apartments/ building shall not be carried out till 31st December, 2015. On an application being made by the office of the Court Receiver, the officer in charge of the concerned local police station shall provide adequate police protection to the staff members of the office of the Court Receiver while carrying out the work of taking over the symbolic possession and the police shall actively assist the staff members of the office of the Court Receiver to take over symbolic possession of the said premises.

5. In view of the undertakings and even otherwise, the petitioners have accepted that the building Pandurang Apartment which they are occupying has been constructed illegally without obtaining the permission of the competent authority. Therefore, petitioners have accepted the correctness and legality of the action initiated under sub section (1) of section 53 of the MRTP Act by the MIDC.

6. On the failure of the petitioners to vacate the premises in their respective possession on or before 31st December, 2015 and on their failure to hand over the vacant possession thereof to either the MIDC or the Court Receiver on or before 31st December, 2015, the MIDC or the Court Receiver shall be entitled to forcibly evict the petitioners and their family members/occupants from their respective premises with the active police help. The officer in charge of the concerned police station shall make adequate police force available to enable the MIDC and the Court Receiver to take physical possession of the premises in said building. Needless to say that after taking over the physical possession, action of demolition shall be immediately taken with the help of the Police. With the above directions and by accepting the undertakings, we dispose of the petition. However, for reporting the compliance, petition shall be listed on 8th January, 2016 under the caption of “directions”.

7. We make it clear that in the event either Court Receiver or the second respondent find that any of the undertakings are either not correctly worded or deficient, it will be open for them to move this Court for vacating the protection granted to the persons who have given the undertakings.

8. We make it clear that the protection granted to the occupants till 31st December, 2015 is in the peculiar facts of the case.

(V.L.ACHLIYA, J.)

(A.S.OKA. J.)