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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION ST NO. 28439 OF 2015

Renu Ramsurat Yadav 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.

Mr. G.S. Hegde with Mr. C.M. Lokesh 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. We have also heard the learned counsel for the second respondent. The learned Court receiver is personally present in the Court. The petitioners have challenged the notices issued by the second respondent-the City and Industrial Development Corporation Limited (CIDCO) under sub section (1) of section 53 of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act"). The petitioners are also challenging the notice dated 3rd October, 2015 issued by the third respondent- the Court Receiver calling upon the petitioners to deliver the possession of the premises occupied by them.

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 Durgamata Plaza 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 44 undertakings). He states that the undertakings of the occupants of all the flats and shops in the said building save and except the flat no. 304 in "A" Wing and shop no.1 have been filed on record. All the undertakings have been affirmed on oath before a Notary Public. The said 44 undertakings are taken on record and marked "A1" collectively for the purpose of identification.

3. By way of illustration, we are reproducing the undertaking of one Renu Yadav occupying flat/room No. 101 in "A" Wing of the said building. What she has stated in the said undertaking is reproduced thus :

"2. I hereby undertake to unconditionally vacate the said premises i.e. Room No. 101 A WING Durgamata Plaza Building, Digha, Navi Mumbai, along with my family members on or before 31/12/2015 and handover the vacant and peaceful possession to the CIDCO/COURT RECEIVER.

3. I say that in the meantime 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/CIDCO 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. In view of the undertakings, the demolition of the building Durgamata Plaza shall not be carried out till 31st December, 2015. The occupant of flat no. 304 in “A” Wing and the occupant of shop no. 1 have not furnished the undertakings. Hence, the Court Receiver shall take physical possession of the said two premises on or after 20th November, 2015. The second respondent CIDCO shall make available necessary staff to the office of the Court Receiver for the purposes of taking over the physical possession of the aforesaid premises. 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 on the work of taking over the physical possession and the police shall actively assist the staff members of the office of the Court Receiver to take over physical possession of the said premises. It will be open for the occupants of the premises to give undertakings on or before 20th November, 2015. In such event, the direction to take over the possession of such premises can be modified.

5. In view of the undertakings and even otherwise, the petitioners

have accepted that the building Durgamata Plaza 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 second respondent.

6. The symbolic possession of all the premises in the said building Durgamata Plaza has already been taken over by the Court Receiver. The undertakings record that the petitioners have no objection for the Court Receiver retaining the symbolic possession.

7. 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 second or third respondents on or before 31st December, 2015, the second or third respondents shall be entitled to forcibly evict the petitioners and their family members/occupants from their respective premises again with the active police help. The officer in charge of the concerned police station shall make adequate police force available to enable the CIDCO and the Court Receiver to take physical possession of the premises in building Durgamata Plaza. 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”.

8. 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.

9. 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.)