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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10414 OF 2015

Kargil Nagar Co-operative Housing Society and Anr. ..Petitioners.

V/s.

The State of Maharashtra and Ors.

..Respondents.

Ms.Gauri Rajendra Ravhuwanshi for the petitioners.

Mr.V.S.Gokhale, AGP for respondent Nos.1 to 3.

Ms.Swati Sagvekar for respondent Nos.4 and 5.

**CORAM : A.S.OKA AND
V.L.ACHLIYA, JJ.**

DATED : 30TH OCTOBER, 2015

P.C. :-

1. By this petition under Article 226 of the Constitution of India, the petitioners have sought a relief of restraining the fourth respondent Municipal Corporation from dispossessing the members of the petitioner from the premises in a building constructed on property described in paragraph 2A of the petition. The learned counsel appearing for the petitioners pointed out that the Court Receiver, High Court, Bombay has already been appointed as the Receiver in respect of the buildings of the first and second petitioners-society.

2. The learned counsel appearing for the petitioners, on

instructions states that the petitioners and their members have accepted that the construction of the buildings of the petitioners society are completely illegal. The learned counsel has stated that the buildings have been constructed on the lands vesting in the State Government. On 16th October, 2015 the petitioners have made an application to the State Government for allotment of the plots on which their buildings are standing.

3. All the occupants of the different buildings of the petitioner societies have tendered undertakings before the Court. Separate undertakings are given by holders of each premises in the building. In the undertakings, the occupants have disclosed the names of their family members who are occupying the premises along with them. There is an undertaking given that if there is no allotment made by the State Government to the petitioners by 31st December, 2015, they will immediately and unconditionally vacate the premises in their respective possession and hand over the vacant possession thereof to the fourth respondent Municipal Corporation. They have also given an undertaking not to transfer, alienate and create any third party rights or interests in the respective premises in their possession.

4. We accept the undertakings. The learned counsel appearing for fourth respondents and fifth states that the officers of

the fourth respondent have verified the undertakings. In view of the said undertakings, we pass the following order:-

- (i) We accept the undertakings tendered record. Registry shall properly compile all the undertakings and paginate them serially;
- (ii) In view of the undertakings, we direct that action of demolition of the buildings of the petitioners shall not be taken till 31st December, 2015;
- (iii) In the event by 31st December, 2015, the lands are not allotted or if the application dated 16th October, 2015 is not decided by the State Government, all the occupants shall hand over the vacant possession of the premises to the fourth respondent Municipal Corporation. We make it clear that the possession shall be handed over even if the application dated 16th October, 2015 is not decided on or before 31st December, 2015 or even if the said application is rejected;
- (iv) If the occupants or any of them fail to deliver the possession by 31st December, 2015 to the fourth respondent, then the Court Receiver, High Court, Bombay shall take forcible possession of the premises in question with the help of police. The concerned local police station shall provide all the necessary protection and assistance to the office of the Court

Receiver for taking over forcible possession of all the premises;

- (v) The State Government shall decide the said application dated 16th October, 2015 as expeditiously as possible and in any event on or before 19th December, 2105;
- (vi) We direct the representative of the petitioners to appear before the Principal Secretary of the Revenue Department on 5th November, 2015 at 3.00 p.m. They shall produce an authenticate copy of this order as well as a copy of the application dated 16th October, 2015 to enable the State Government to take necessary action;
- (vii) With the above directions, we dispose of the petition.
- (viii) For reporting compliance, the petition shall be listed on 7th January, 2016;

(V.L.ACHLIYA, J.)

(A.S.OKA. J.)