

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12264 OF 2015

Kamlakar Rama Patil and Others. .. Petitioners
Vs
The State of Maharashtra and Another. .. Respondents
—
Shri Saurabh D. Butala for the Petitioners.
Mrs. M.P. Thakur, AGP for the Respondent No.1.
Ms. Shyamali Gadre i/b Little & Co for the Respondent No.2.
—

CORAM : A.S. OKA & G.S. PATEL, JJ
DATED : 11TH DECEMBER 2015

P.C.

1. Heard the learned counsel appearing for the Petitioners, the learned AGP for the First Respondent State of Maharashtra and the learned counsel appearing for the Second Respondent- Maharashtra Industrial Development Corporation (for short “MIDC”). The challenge in this Petition is to the notices issued under subsection (1) of Section 53 of the Maharashtra Regional & Town Planning Act, 1966 by the MIDC.

2. In this Petition, the notice is in respect of the building known as “Kamlakar Apartment” (G+4), Ganpatipada, Village Digha, Navi Mumbai. In this Petition, the Petitioners have filed undertakings which are taken on record and marked “X1” (collectively) for identification.

3. The learned counsel appearing for the Petitioners accepted that the building subject matter of this Petition has been constructed without obtaining any Development Permission from the Planning Authority. Undertakings have been given by the aforesaid Petitioners to vacate the premises in their respective possession on or before 31st December 2015 and to hand over the vacant and peaceful possession thereof to the MIDC. The Petitioners have stated that they have no objection if the Court Receiver, High Court, Mumbai is appointed in respect of the premises occupied by them. Undertakings are also given that the Petitioners will not transfer and/or alienate and will not part with possession of their respective premises in the aforesaid building.

4. After tendering the undertakings, a submission was made across the bar that considering the difficulties faced by some of the Petitioners, the time to vacate may be extended till the end of February 2016.

5. While dealing with the Petitions challenging the action of demolition in respect of illegal buildings constructed in Navi Mumbai, this Court has consistently granted time to vacate till 31st December 2015. Therefore, the said prayer cannot be accepted. Only in the cases where individual flat purchasers or occupants make out a case of

extreme hardship, such a prayer can be considered. The Petitioners have taken premises in the building knowing fully well that the building has been constructed without obtaining any Development Permission from the Planning Authority and that also on the public property vesting in MIDC.

6. As the Petitioners have accepted that the construction of the building is illegal and as they have given unconditional undertakings to vacate the premises in their respective possession, the time to vacate till 31st December 2015 deserves to be granted.

7. In view of the acceptance of the illegality of the building, the challenge in this Petition to the action under sub-section (1) of Section 53 of the Maharashtra Regional & Town Planning Act, 1966 does not survive.

8. As the Petitioners have no objection for appointment of the Court Receiver, we propose to appoint the Court Receiver, High Court with a direction to the Court Receiver to take symbolic possession of the said building and premises therein.

9. Hence, we dispose of the Petition by passing the following order:

ORDER :

- (a) The Writ Petition is rejected;
- (b) The undertakings of the Petitioners marked “X1” (collectively) are accepted. In view of the undertakings, the action of demolition shall not be taken by the Maharashtra Industrial Development Corporation on the basis of the impugned notices till 31st December 2015;
- (c) We appoint the Court Receiver, High Court, Mumbai as a Receiver of the building subject matter of this Petition. The Court Receiver shall take symbolic possession of all the premises in the building;
- (d) The Petitioners are directed to deposit total amount of Rs. 15,000/- with the Office of the Court Receiver, High Court, Mumbai within a period of one week from today. However, the Court Receiver shall proceed to take symbolic possession even before deposit of the amounts;

- (e) In the event of the failure of the Petitioners to vacate the premises in their respective possession and hand over possession thereof to the MIDC on or before 31st December 2015, the Court Receiver shall take forcible possession of the premises in possession of the Petitioners with the police assistance;
- (f) On an application made by the Office of the Court Receiver, the local Police Station shall grant necessary police protection and assistance to the Office of the Court Receiver;
- (g) After the Court Receiver takes physical possession of the premises in the building subject matter of this Petition, he shall hand over the possession to the MIDC to enable the MIDC for taking the action of demolition;
- (h) All concerned to act on an authenticated copy of this order.

(G.S. PATEL, J)

(A.S. OKA, J)