

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.2946 OF 2014
IN
CIVIL APPLICATION NO.2899 OF 2014
IN
WRIT PETITION NO.10799 OF 2014

Shri Barkat Ali Shaikh & Ors.Applicants.
Versus
The Addl. Collector (Enc. & Rem.)
& Ors. ...Respondents.

Mr. A.N.Giri with Sagar Batania, advocates for the applicants.
Mr. S.D.Rayrikar, AGP for the respondent no.1.
Mr. B.V.Phadnis i/by Utangale & Co., advocate for respondent nos.2 and 3.
Mr. Madhur Surana, advocate for respondent no.4.

CORAM : M.S.SONAK, J.

DATED : January 19, 2015

P.C.:

By this civil application, applicants seek relief of declaration that the undertakings submitted by them shall be binding only in respect of four structures of the applicant nos.1, 2 and structure of late Mohammed Idris and that such undertakings will not be binding upon the structures of applicant nos.3,4 and 5. Further relief applied in civil

application is for direction to respondent no.3 to decide the issue of eligibility of applicant nos.3,4 and 5 in a time bound schedule and until decision upon the same, said applicants' structures be not demolished.

2 This Court by judgment and order dated 2.12.2014 has disposed of Writ Petition No.10799 of 2014 by recording that the grievance of the petitioners no longer survives. At the request of the learned counsel for the petitioners, reasonable time of 15 days was granted to vacate the structures making it clear that no further extension would be granted.

3 By further order dated 17.12.2014, time to vacate was extended subject to petitioners' filing written undertakings made in terms of statement made to the Court that they will vacate the structures on the dates promised. Such undertakings have been filed and thereafter this civil application has been taken out.

4 By order dated 24.12.2014, some limited relief was granted to the applicants though in absence of learned counsel for the respondent no.4.

5 Heard learned counsel for the applicants. The order dated 2nd December, 2014 by which Writ Petition No.10799 of 2014 was disposed of had not linked the issue of eligibility with that of vacation of structures. Such relief does not appear to have been prayed for by the applicants, when the order dated 17.12.2014 was made by this Court. Petition has already been disposed of, making civil application of such nature, in petition, which had already been disposed of, does not seem to be appropriate. Entire attempt appears to be to avoid compliance with the undertakings given to this Court.

6 In the aforesaid circumstances, civil application is liable to be dismissed. However, in the interests of justice, direction shall be issued to the respondent no.3 to decide the issue of eligibility of applicant nos.3 to 5 within a period of four weeks from today. Applicants shall co-operate in a matter of expeditious disposal of the proceedings before the respondent no.3. It is made clear that pendency of the proceedings before the respondent no.3 shall be no excuse for the applicants to comply with their undertakings to vacate premises given to this Court. In case applicants, consistent with their undertakings do not vacate the structures within one week from today then authorities shall take action for the purposes securing eviction and demolition as has been directed by this Court in its order dated 2.12.2014.

7 With the aforesaid , civil application is disposed of.

8 In view of the decision made in this civil application, civil application no.2899 of 2014 does not survive and the same is also dismissed.

(M.S.SONAK, J.)