

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 117 OF 2016

Mr.Satish Shankar Patil and others. ... Applicants.

V/s.

The State of Maharashtra and others. ... Respondents.

WITH

CIVIL APPLICATION NO. 118 OF 2016

Mr.Kamod Shankar Patil and others. ... Applicants.

V/s.

The State of Maharashtra and others. ... Respondents.

IN

Writ Petition NO. 12911 OF 2015

Saurabh Butala i/b. Harshad Bhadbhade for the applicants.

Ms.Shyamali Gadre with Ankit Kulkarni and Abhijeet Deshpande
i/b. Little & Co. for respondent No.2.

S.S.Deshpande, Court Receiver present in person.

CORAM : A.S. OKA AND C.V.BHADANG, JJ.

DATED : 14th January 2016.

PC. :

Heard learned counsel for the applicants and the learned
counsel for the respondent No.2.

2. The Writ Petitioners claimed to be the occupants of the building "Ambika Apartment" at Digha, Taluka and District Thane. Civil Application No.117/2016 has been filed by 9 Writ Petitioners in the disposed of Writ Petition who are claiming to be the owners of the flats/premises in the said building and 12 other applicants are claiming to be in possession of the flats in the building. The first 9 applicants who are some of the Writ Petitioners who have given undertakings to vacate their respective flats on or before 31st December 2015 on the representation that they were in possession of the flats. Now, they are accepting that in fact they were not in possession when undertakings were given by them and they had inducted the other applicants in the said application. Civil Application No.118/2016 is filed by some of the petitioners in the Writ Petition who had filed undertakings to vacate the flats in the said building. In the Writ Petition, those applicants in both the applications who were the original Petitioners accepted that the said building has been constructed illegally on the land vesting in the second respondent- the Maharashtra Industrial Development Corporation (MIDC). The other applicants are claiming through them.

3. In the Writ Petition, the challenge was to the action of demolition of the said building initiated by the second respondent- the Maharashtra Industrial Development Corporation (MIDC) which is the planning authority under the provisions of the Maharashtra Regional and Town Planning Act, 1966 for the area in which the building is situated. The petitioners in the Writ Petition filed separate undertakings stating that they were in possession of specific flats in the said building. The names

of the family members of the each of the petitioners were set out in the undertakings filed by the petitioners. Undertakings were given by each of the petitioners to hand over the symbolic possession of the premises to the Court Receiver and undertakings were given not to transfer or alienate the flats and not to part with the possession thereof. All of them gave solemn undertakings to hand over the possession of the premises in the said building to MIDC/the Court Receiver on or before 31st December 2015 to facilitate the demolition of the building. By order dated 10th December 2015, the Writ Petition was rejected by affirming the action initiated by the MIDC of demolition of the said building. The undertakings were accepted. The building consists of ground + 7 floors. It is not in dispute that the building has been constructed without obtaining permission from the competent authority on the land vested in MIDC. By order dated 10th December 2015 passed in the Writ Petition, a direction was issued to the Court Receiver to take forcible possession of the premises in possession of the petitioners with police assistance, if the petitioners fail to vacate the premises and hand over the possession thereof by 31st December 2015 to the Court Receiver/MIDC. The prayer in these applications is for grant of extension of time to vacate the premises by a period of six months.

4. Civil Application No.38/2016 was filed by the Writ Petitioners seeking extension of time to vacate the premises on humanitarian grounds. At the time of hearing of the said application, it was revealed that some of the petitioners had filed false undertakings stating that they were in possession of the premises. Accordingly, on the request made by the the learned counsel appearing for the applicants in the said

application, who were the Writ Petitioners, the said application being Civil Application No.38/2016 was dismissed as withdrawn. Thereafter, the present two applications have been filed.

5. The learned counsel appearing for the applicants submitted that the applicants are seeking time to vacate the premises till 31st May 2016 on humanitarian grounds. The submission is that some of the applicants are innocent flat purchasers and/or licensees who have taken the flats/premises without the knowledge that the building has been illegally constructed. The opposition of the learned counsel appearing for the MIDC is based on the affidavit-in-reply and additional affidavit-in-reply filed in the main petition wherein it was pointed out that on 21st August 2014, a substantial part of ground + 3 floors of the said building was demolished. The photographs taken on 21st August 2014 were annexed to both the affidavits. The photographs show that ground + 3 floors have been substantially demolished and large parts of the slabs of all the floors have been demolished. The learned counsel appearing for the MIDC submits that by brazenly reconstructing the building, the same has been occupied. The submission of the learned counsel appearing for the applicants is that in the month of October 2014, the agreements were executed before a Notary Public for acquiring the flats when the building was ready. Copies of the three agreements have been placed on record and mark B-2 (collectively) for identification. He does not dispute that some of the petitioners had paid a part of the consideration even prior to August 2014. He, therefore, submits that innocent flat purchasers or the innocent licensees should not be allowed to suffer. He also urged that the

State Government has already come out with the draft policy to protect the building.

6. We have given careful consideration to the submissions made before us. The Writ Petition in which the present applications have been filed was filed by 83 petitioners. In the Writ Petition, an averment is made that the petitioners were in possession of the said building and the premises therein right from the year 1991. The learned counsel appearing for the applicants tried to explain that the said averment is nothing but a typographical error. In the said petition, the MIDC has filed an affidavit-in-reply dated 2nd December 2015 to which photographs of the said building taken on 20th August 2014 have been annexed. The said photographs show that the demolition work was in progress. The affidavit also discloses that the plot on which the said building “Ambika Apartment” was illegally constructed has been already allotted by the MIDC to a third party. There is an additional affidavit filed in the said petition dated 9th December 2015 to which photographs taken from 20th to 23rd August 2014 have been annexed by the MIDC which support the case made out by the learned counsel for the MIDC that a large part of ground + upper three floors of the building was demolished and the portions of slabs of various floors were also demolished. Today, the learned counsel appearing for the applicants tendered photo copies of some of the agreements (marked as B-2) which have been executed in October 2014 in favour of some of the petitioners. From the photographs which are on the record of the petition and which were not disputed by the petitioners, it is impossible to accept that the building was constructed in

the year 1991. The photographs of 20th August 2014 show that the building has been newly constructed. Most importantly, in the three Agreements tendered on record by the applicants, shockingly, there is a specific clause that the purchaser is fully aware that the said building is unauthorized. In the agreement of Bhimrao Kakekar, it is clause no.7 and in the agreements of Mrs. Shakuntala Pansare and Shri Dilip Salunkhe, it is clause no.8. This falsifies the case of the Petitioners of being the innocent purchasers. There is one more serious aspect which must be noted that all 83 petitioners filed solemn undertakings on affidavits stating that they were in possession of the distinct premises in the said building. They disclosed the names of the family members occupying the respective flats/premises with them. They had given undertakings not to part with the possession of the premises and not to create third party interests. The same set of petitioners filed Civil Application No.38/2016 seeking extension of time without disclosing the fact that some of them had already parted with the possession of the respective flats/premises in respect of which undertakings were given. The learned counsel appearing for the applicants submits that at least 9 Writ Petitioners, who had given undertakings to the aforesaid effect, were, in fact, not in possession of the premises and they had parted with the possession when the Writ Petition was filed and when the undertakings were given. We are of view that the other petitioners cannot be ignorant of the fact that some of them were not in possession when the petition was filed. Therefore, not only that false statements were made in the Writ Petition but also undertakings on oath which were filed by some of the petitioners which turned out to be completely false.

7. There is another important aspect. On 20th and 21st August 2014, a substantial part of the building was demolished by MIDC and the building was made inhabitable. With the knowledge that the substantial part of the building was demolished that the petitioners have ventured to enter into the transactions for the purchase of flats and premises in the said building. Therefore, it is impossible to accept the case of the petitioners that they are innocent flat purchasers. The petitioners have acquired flats/ premises on ownership basis in the said multi-storied building consisting ground + 7 floors illegally constructed on the land held by MIDC. Therefore, the petitioners are not entitled to invoke any sympathy. On the contrary, this is a fit case wherein action should be initiated against the petitioners for making false statements in the Writ Petition as well as in the undertakings filed by some of them. We must note here that if the said statements were a *bonafide* mistake, then there was an opportunity available to the petitioners to come with clean hands before the Court when they filed Civil Application No.38/2016 on 30th December 2015. Even in the said application, it is mentioned that all of them were in possession. At this stage, learned counsel appearing for the applicants states that in the said civil application, the facts were disclosed. We have again carefully perused the said application. There are certain bald statements in paragraph- 17 onwards without annexing a single document. They have not disclosed as to when certain flats were given on leave and licence basis.

8. Apart from this, the land on which the building has been constructed has already been allotted by the MIDC to a third party. As

stated earlier, not only that the applicants in these applications do not deserve sympathy but this is a fit case where some of them will have to be taken to the task for making false statements on oath in the petition as well in the undertakings-cum-affidavits.

9. However, what is pointed out that some of the occupants have school going children. It is only for this reason that we are inclined to issue directions to the Court Receiver not to dispossess the persons found in possession of the building till 15th February 2016. Today, we are not inclined to initiate any action against the petitioners/applicants who have made false statements in the petition as well as in the undertakings. If the applicants do not co-operate with the Court Receiver, we grant liberty to the respondents to move this Court as and when necessary for initiating action . Hence, we pass the following order:

ORDER

Both the applications are rejected. However, we direct the Court Receiver not to take the physical possession of any of the premises in the said building till 15th February 2016. The Court Receiver will continue to proceed by giving notices to the occupants.

Needless to state that if the premises are not vacated and the possession thereof is not handed over either to the MIDC or to the Court Receiver, from 16th February 2016 onwards, the Court Receiver shall take steps to take forcible possession of the premises as directed in the order passed in the main petition.

(C.V. BHADANG, J)

(A.S.OKA, J)