

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 126 OF 2016
IN
WRIT PETITION NO. 7211 OF 2015

Ramakant Shridhar Sawant & Ors. ..Applicants / Petitioners
VS.
Chief Executive Officer,
M.B.R. & R. Board & Ors. ..Respondents

Mr. Prashant G. Sawant for Applicants
Mr. Vaibhav Parashurami for Respondent Nos. 1 and 2.
Mr. Vinod Mahadik for Respondent No. 3.
Mr. Arshad Shaikh – Senior Advocate with Mr. A. B. Ansari i/b. Mr.
Manoj Kadam for Respondent No. 4.

CORAM : M. S. SONAK, J.
DATE: 21 JANUARY 2016

P.C :

1] This civil application is an abuse of the process of this Court.
The main petition was disposed of by order dated 27 October 2015.
The order is in terms of minutes handed in by the parties, which
includes the applicants herein.

2] In terms of the minutes, as well as the order, the respondent
no. 4 in the main petition, is required to allot to the applicants
permanent premises, which offer the respondent no. 4 had given,
even before the main petition was instituted. However, the
applicants had certain grievance with regard to the habitability of

such permanent premises. Therefore, in paragraph 2 of the order dated 27 October 2015, as also in the minutes, the MHADA was required to look into the issue of habitability and upon their certification that the permanent premises are indeed habitable, the applicants had undertaken to vacate the premises presently occupied by them within a period of one week, so that further development can proceed. It was made clear that in case there is any breach, the MHADA shall be entitled to enforce the orders made by it under Section 95A. The applicants had also furnished undertakings to this Court which were duly accepted by this Court to the effect that they would vacate within one week from the date of certification by the MHADA.

3] By this civil application, the applicants contend that the MHADA has issued notice to them to vacate their present premises within 48 hours. The learned counsel for the applicants contends that there has been no compliance with the directions contained in the order dated 27 October 2015 as also the minutes. He contended that there is no certification by the MHADA and directly the Authorities attempt to enforce the orders under Section 95A. This civil application was moved at the stage of production and considering the urgency, this Court was persuaded to take up the matter today itself.

4] The learned counsel for the MHADA has submitted that after the order dated 27 October 2015 was made, the MHADA officials on 9 November 2015 held an inspection of the permanent premises which were to be offered to the applicants. On the said date, upon noticing certain deficiencies, directions were issued to the respondent no. 4 to remedy the same. This was made clear by communication dated 21 November 2015. Thereafter, the respondent no. 4, by communication dated 30 November 2015 informed the MHADA that the deficiencies have been cleared. The applicants in the meanwhile, made representations to several Authorities. On 17 December 2015 a joint inspection was held. The MHADA officials expressed satisfaction that the deficiencies have been cleared and the premises are habitable. On 5 January 2016, although, it was really not necessary, the matter was posted for hearing. On this date, it was once again made clear that MHADA is satisfied that the permanent premises are habitable.

5] There is no reason to disbelieve the submissions of the learned counsel for the MHADA particularly because the same are backed by correspondence / documents to the said effect. After all this was done, there was really no justification for the applicants not to comply with the directions of this Court, particularly as the

directions are based upon the minutes handed by the applicants and the respondent no. 4. That apart, the applicants had also furnished undertakings that they would vacate their present premises within seven days from the date of certification of the MHADA. The MHADA in the present case, appears to have been overgenerous to the applicants and yet, the applicants complain that they have been offered only 48 hours to vacate. This is not at all proper. The applicants seek to avoid the solemn undertakings which they have given to this Court and on the basis of which, the orders came to be made for their benefit.

6] Therefore, there is absolutely no merit in this civil application. This civil application is therefore dismissed.

7] The time limit for vacating the present premises has already expired. In terms of the orders made, the Authorities are entitled to enforce the orders under Section 95A, including, if necessary, by taking assistance of the police. This is a fit case for imposition of exemplary costs. However, in case the wiser counsel prevails and the applicants vacate their present premises latest by 22 January 2016, there is no necessity for them to pay any costs to the respondents. However, the applicants, consistent with their undertakings, of which, they are *prima facie* in breach, fail to

vacate the present premises on or before 22 January 2016, then the applicants / petitioners shall pay costs of Rs.10,000/- each to the respondents. It is made clear that such costs will have to be paid at the rate of Rs.10,000/- per applicant / petitioner to all the respondents collectively. This means that the total cost awarded in favour of the said respondents shall be Rs.1,40,000/-. In case the applicants / petitioners on their own, vacate on or before 22 January 2016, there shall be no necessity of payment of such costs.

8] Civil Application is dismissed in the aforesaid terms.

(M. S. SONAK, J.)

Chandka