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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3271 OF 2009

Shri Pankaj Janardan Mhatre

.. Petitioner

Vs.

1. The State of Maharashtra and ors.

.. Respondents

**WITH
CRIMINAL APPLICATION NO. 33 OF 2016
IN
CRIMINAL WRIT PETITION NO. 3271 OF 2009**

Aparna Anil Puranik

.. Applicant
(Org. Respondent No.5)

Vs.

1. Pankaj Janadhan Mhatre and ors.

.. Respondents

(No.1 – Org. Petitioner &
Nos.2 to 5 – Org.
Respondents)

Mr. Sagar Joshi for petitioner in Cri. W.P. No. 3271 of 2009 and for respondent no.1 in Cri. APPW No. 33 of 2016.

Mr. J. P. Yagnik, APP for State.

Smt. Aparna Anil Puranik, respondent no.5 – in person in Cri. WP No. 3271 of 2009 and applicant-in-person in Cri. APPW No.33 of 2016.

Mr. Mandar Limaye for respondent – Thane Municipal Corporation in both the matters.

CORAM: NARESH H. PATIL &
PRAKASH D. NAIK, JJ.

JULY 27, 2016.

P.C.

1. Criminal Writ Petition No. 3271 of 2009 is filed by the petitioner praying for following relief :-

- (a) Writ of Mandamus, Writ in the nature of Mandamus or any other appropriate Writ directing the Respondent Nos.2 and 3 to remove the occupants of the building consisting of ground plus 3 upper floor and popularly known as 'Saptarshi', situated on the land bearing City Survey No. 75 B, Tikka No.15 situated at Vishnunagar, Naupada, Thane forthwith or within a period of 2 weeks from the date of this order as this Hon'ble may deem fit and proper to enable the said building to be demolished in accordance with law;

2. We have perused the order passed by the Division Bench of this court (Coram: D. B. Bhosale & A. R. Joshi, JJ.) on 28/4/2010 and the subsequent orders passed from time to time. In the order dated 14/12/2010, the Division Bench (Coram : A. M. Khanwilkar and A. P. Bhangale, JJ.) has observed in para 3 as under :-

“3. We appoint High Court Receiver and / or competent person deputed by him to supervise execution of the proposed agreement between the Petitioner and/or developers, on one hand and the Respondent No.5 or the Respondent No. 6, as the case may be, on the other hand. That shall be done on 21st December, 2010 before Registrar at 11 a.m. The agreement shall be in terms of the undertaking filed by the Petitioner before this court. If any of the Respondent No.5 or 6 fail to appear in the Office of the Registrar, Thane, or to execute the proposed agreement, the Court Receiver shall proceed to take over physical possession of the disputed premises, if necessary by employing police force soon thereafter and get the disputed premises presently in occupation of the Respondent Nos. 5 and 6 vacated, to be handed over to the Petitioner in consonance with and in compliance with the direction given by this Court on 18th April, 2008 and reiterated on 22nd November, 2010.

3. On 21/12/2015, the Division Bench (Coram : Naresh H. Patil & S. B. Shukre, JJ.) passed the following order :-

“1. Learned counsel appearing for the petitioner submits that flat in the subject building admeasuring 590 sq.ft.

is ready in accordance with the agreement executed between the petitioner and respondent no.5 – party in person. It is submitted that six floors of the subject building are already completed. Learned counsel appearing for the Corporation submits that the part O.C. has been granted on 7/9/2015. Photostat copy of the same be placed on record. Learned counsel appearing for the petitioner submits that bank guarantee of Rs.50 lakhs has been already submitted to this court since the year 2010, which is renewed from time to time. Rs.12,500/- per month is the rent compensation.

2. The respondent no.5 – party-in-person submits that she will not accept flat admeasuring 590 sq.ft. because she is entitled for a bigger flat. It is further submitted by her that rent compensation for last few months has not been paid to her. It is submitted that both the parties i.e. petitioner and the Corporation are making false submissions through their respective lawyer.

3. We have perused the applications filed by respondent no.5 – party-in-person. Heard the submissions advanced before us. Perused the record. This petition is pending since the year 2009. From time to time number of orders have been passed by various Division Benches of this court protecting the interest of the respondent no.5 – party-in-person.

4. We find appropriate to pass following order :-
- (a) The rent compensation shall be paid till December, 2015. Arrears of rent compensation, if any, shall be deposited within a week's time with the Registry of this court. The respondent no.5 – party-in-person is entitled to withdraw the same.
 - (b) From 1st January, 2016, the respondent no.5 – party-in-person will not be entitled to get any rent compensation. The respondent no.5 – party-in-person is entitled to occupy the subject flat admeasuring 590 sq.ft.
 - (c) Issue, concerning return of the bank guarantee will be considered at an appropriate stage.

Stand over for four weeks i.e. 18th January, 2016.”

4. Learned counsel appearing for the petitioner submits that, in fact, nothing survives in this petition and he has been instructed to withdraw the petition, but at the instance of the respondent no.5 – party-in-person, the petition is kept pending and being heard from time to time. According to the petitioner, record shows that the respondent no.5 – party-in-person is entitled for tenement

admeasuring 443.92 sq.ft., whereas the petitioner is providing her 590 sq.ft. area consisting of two bed rooms, living room and kitchen on the first floor of newly constructed building. Learned counsel submits that the flat of the respondent no.5 is fully ready and it can be occupied by respondent no.5 any time. An agreement has already been executed.

5. Respondent No.5 – party-in-person insisted for hearing on Criminal Application No. 33 of 2016 filed by her. In the said application, several prayers are made. She submitted that she is entitled for 726 sq.ft. area instead of 590 sq.ft. Her contention is that the petitioner has not provided proper accommodation with complete amenities. She has objected to withdrawal / disposal of the petition. The respondent no.5 submits that that her other applications are also pending. Learned counsel appearing for the petitioner submitted that since long he has been requesting this court to return bank guarantee to the petitioner. In the order dated 21/12/2015, this court recorded that issue, concerning return of bank guarantee will be considered at an appropriate stage.

6. Learned counsel appearing for the Corporation submitted that the Corporation authorities, after inspecting the building, had given part Occupation

Certificate. According to the learned counsel, the respondent no.5 can occupy the flat which is now ready and can be used.

7. We have perused the record. It is noticed that the petition is being hearing from time to time since the year 2009. Petitioner has already provided flat of 590 sq.ft. area to the respondent no.5. Agreement was also executed. It is for the respondent no.5 – party-in-person whether to occupy the said flat or not. The subject issue cannot be stretched any further. We have looked into the basic purpose of filing of the petition in the year 2009 and the orders passed thereunder from time to time by this court. We have considered the plea submitted by the learned counsel for the petitioner and the Municipal Corporation. The request of the petitioner for return of bank guarantee at least at this stage is well founded and requires consideration by this court. No purpose is going to be served by keeping and continuing the bank guarantee in force indefinitely.

8. Considering the record placed before us, the earlier orders passed from time to time and the submissions advanced, we pass following order :-

ORDER

- (a) The petitioner is relieved of continuing the bank guarantee before this court. The petitioner is entitled to withdraw the bank guarantee.

(b) The applicant in Criminal Application No.33/2016
Aparna A. Puranik may occupy the subject flat.

9. In the facts of the case, rest of the prayers in the Criminal Application do not deserve consideration in exercise of writ jurisdiction of this Court. Criminal Application No. 33/2016 stands disposed of.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL,J.)