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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1309 OF 2016

Kargil Nagar Co-operative Housing
Society (Proposed) Kargil and Anr.

... Petitioners

Vs.

The State of Maharashtra and Ors.

... Respondents

Mr. R.S. Apte, Senior Advocate i/by Mr. Mandar Limaye for the
Petitioners.

Mrs. M.P. Thakur, AGP for the Respondent Nos.1 to 4.

Ms. Swati H. Sagvekar for the Respondent No.5.

Mr. M.S. Deshpande, Court Receiver, High Court, Bombay.

**CORAM : A.S. OKA &
C.V. BHADANG, JJ.**

DATE : 2nd MARCH, 2016

P.C.

1 The challenge in this Petition under Article 226 of the
Constitution of India is to the decision communicated to the Petitioners
by the State Government by the letter dated 30th December, 2015. The
Petitioners represent occupants of several illegal buildings. By the
communication, the Application for regularisation of the possession was

rejected by the State Government. The Petitioners filed earlier Writ Petition No.10414 of 2015.

2 The said Petition was disposed of by Judgment and Order dated 30th October, 2015 which reads thus :-

- “1. By this petition under Article 226 of the Constitution of India, the petitioners have sought a relief of restraining the fourth respondent Municipal Corporation from dispossessing the members of the petitioner from the premises in a building constructed on property described in paragraph 2A of the petition. The learned counsel appearing for the petitioners pointed out that the Court Receiver, High Court, Bombay has already been appointed as the Receiver in respect of the buildings of the first and second petitioners-society.
2. The learned counsel appearing for the petitioners, on instructions states that the petitioners and their members have accepted that the construction of the buildings of the petitioners society are completely illegal. The learned counsel has stated that the buildings have been constructed on the lands vesting in the State Government. On 16th October, 2015 the petitioners have made an application to the State Government for allotment of the plots on which their buildings are standing.

3. All the occupants of the different buildings of the petitioner societies have tendered undertakings before the Court. Separate undertakings are given by holders of each premises in the building. In the undertakings, the occupants have disclosed the names of their family members who are occupying the premises along with them. There is an undertaking given that if there is no allotment made by the State Government to the petitioners by 31st December, 2015, they will immediately and unconditionally vacate the premises in their respective possession and hand over the vacant possession thereof to the fourth respondent Municipal Corporation. They have also given an undertaking not to transfer, alienate and create any third party rights or interests in the respective premises in their possession.
4. We accept the undertakings. The learned counsel appearing for fourth respondents and fifth states that the officers of the fourth respondent have verified the undertakings. In view of the said undertakings, we pass the following order:-
 - (i) We accept the undertakings tendered record. Registry shall properly compile all the undertakings and paginate them serially;
 - (ii) In view of the undertakings, we direct that action of demolition of the buildings of the petitioners shall not be taken till 31st December, 2015;
 - (iii) In the event by 31st December, 2015, the lands are not allotted or if the application dated 16th

October, 2015 is not decided by the State Government, all the occupants shall hand over the vacant possession of the premises to the fourth respondent Municipal Corporation. We make it clear that the possession shall be handed over even if the application dated 16th October, 2015 is not decided on or before 31st December, 2015 or even if the said application is rejected;

- (iv) If the occupants or any of them fail to deliver the possession by 31st December, 2015 to the fourth respondent, then the Court Receiver, High Court, Bombay shall take forcible possession of the premises in question with the help of police. The concerned local police station shall provide all the necessary protection and assistance to the office of the Court Receiver for taking over forcible possession of all the premises;
- (v) The State Government shall decide the said application dated 16th October, 2015 as expeditiously as possible and in any event on or before 19th December, 2105;
- (vi) We direct the representative of the petitioners to appear before the Principal Secretary of the Revenue Department on 5th November, 2015 at 3.00 p.m. They shall produce an authenticate copy of this order as well as a copy of the application dated 16th October, 2015 to enable the State Government to take necessary action;
- (vii) With the above directions, we dispose of the petition.

(viii) For reporting compliance, the petition shall be listed on 7th January, 2016.”

3 Perused the order dated 3rd February, 2016 in this Petition. As far as the first Petitioner is concerned, the Writ Petition was rejected by the said order. The said order has been confirmed by the Apex Court. As far as the second Petitioner is concerned, this Court in paragraph 8 recorded that there is no reason to find fault with the reasons recorded by the State Government in the letter dated 30th December, 2015. Perhaps, the Petition was not disposed of as far as the second Petitioner is concerned, as it was contended that a policy of regularisation of the State Government is likely to come. The submission of the learned Senior Counsel appearing for the Applicant is that such policy is likely to be approved by the Cabinet on 9th March, 2016.

4 We may make useful reference to the order passed on 16th February, 2016 in PIL No.80 of 2013 and 138 of 2012. The said order records that though a draft policy was placed on record of the said Writ Petitions and though the learned Advocate General was heard on the said draft policy, on 16th February, 2016, a statement was made by the learned Advocate General that the said draft policy was not approved by the Cabinet.

5 As far as the merits of the case are concerned, a finding is already recorded against the second Petitioner in paragraph 8 of the earlier order dated 3rd February, 2016. The learned Senior Counsel appearing for the Petitioners pointed out that the order dated 3rd February, 2016 insofar as it dismisses the Petition filed by the first Petitioner was challenged by first Petitioner by filing a Special Leave Petition and the Apex Court has dismissed the said SLP. In paragraph 8 of the said order, this Court has already held that no fault can be found with the decision dated 30th December, 2015 when the State Government rejected the proposal of regularisation of the second Petitioner. The reason given by the State Government is that the buildings of the second Petitioner have been constructed on lands reserved for various public purposes in the sanctioned development plan. The occupants who are represented by the second Petitioner have already given undertaking to vacate their respective flats by 31st December, 2015. That is recorded in the aforesaid order in Writ Petition No.10414 of 2015.

6 Hence, there is no merit in the Petition even as far as the second Petitioner is concerned. Therefore, the Petition stands rejected as far as the second Petitioner is concerned. Action of dispossession and demolition as far as the building of the second Petitioner is concerned,

shall be taken immediately after 1st April, 2016 in terms of the orders which are already passed by this Court in Writ Petition No.10414 of 2015.

(C.V. BHADANG, J)

(A.S. OKA, J)