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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELATE JURISDICTION  
CIVIL APPLICATION NO.1274 OF 2016 IN  
WRIT PETITION NO.5215 OF 2013

Gajanan Developers & Ors. ...Applicants  
vs.  
The District Collector, Pune  
and others ...Respondents

Mr.Uday B. Nighot i/b Mr.S.R.Agarkar for the  
applicants  
Mr.Tejas Deshmukh for the petitioner  
Mr.Manoj Badgular for the respondent Nos.10 to 12,  
18, 20, 24, 28 , 33 to 36.

CORAM : A.S.OKA, &  
A.A.SAYED, JJ.  
DATE : JUNE 8, 2016

P.C.:

1 Heard the learned counsel for the applicants. The prayer is for modification of the final Judgment and Order dated 27<sup>th</sup> January 2016 in Writ Petition No.5215 of 2013 and other connected matters. The first applicant is a builder and developer who admittedly made construction of three illegal floors each on three buildings. This Court has protected the flat purchasers of the illegal floors while permitting the applicants to make an application for regularization. The applicants were directed to deposit in this Court the entire consideration received by them from the flat purchasers of the flats on illegal floors. Accordingly, the entire amount has been deposited. Admittedly, the applicants could not succeed in getting the illegal

floors regularised and now the issue of regularization has been finally concluded against the applicants.

2 This application has been made on the basis of the liberty granted under clause (v) of the paragraph 25 of the operative part of the Judgment and Order dated 27<sup>th</sup> January 2016. Clause (v) reads thus:

“(v) If M/s.Gajanan Builders petitioners are able to provide marginal distance of 8.65 meters on all sides of the three buildings within a period of three months from today, they will be entitled to apply for modification of this Judgment and order.”

3 The Judgment and order dated 27<sup>th</sup> January 2016 has become final. It is not the case of the applicants in this application that in terms of clause (v), they are able to provide marginal distance of 8.65 meters on all sides of the three buildings. The applicants have simply relied upon the letter dated 10<sup>th</sup> May 2016. In the said letter, the Chief Fire Officer, Pune Municipal Corporation has observed that though there is less marginal distance on the southern side of Building Nos.B1 and B2, there is sufficient road available to take the fire vehicle near all the buildings. He has expressed an opinion that after making a provision in the said buildings for extinguishing fire and keeping them in proper condition, there will be no

problem if any fire breaks in the said buildings and the fire brigade can extinguish the said fire without any difficulty.

4 One of the objects of providing the rule regarding marginal distance is to ensure that there is fire safety. It enables the emergency vehicles to have access. Fire is not the only emergency. We are shocked to note that the Chief Fire Brigade Officer of the Pune Municipal Corporation has expressed his personal opinion which runs completely contrary to the Development Control Rules. Therefore, the applicants cannot invoke clause (v) of the said Judgment and Order as admittedly there is no requisite marginal distance provided on all four sides of the buildings.

5 The learned counsel for the applicants submits that the applicants are willing to give necessary undertakings so that time of four months from today can be granted to enable them to accommodate the flat purchasers in another building. We must note here that none of the flat purchasers have come before the Court to state that though the Court has permitted withdrawal of the amount by the flat purchasers, he or she does not want that money.

6 As stated earlier, the order rejecting the application for regularization of the additional floors has attained finality. Even as of today, the applicants have not provided adequate marginal distance as required by the Rules. Therefore, there

is no reason to show any leniency to the applicants who have brazenly constructed three illegal floors with the full knowledge that there was no permission granted by the Competent Authority to construct the additional floors. Hence, there is no merit in the application and the same is accordingly rejected.

(A.A.SAYED,J.)

(A.S.OKA,J.)