

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6230 OF 2016

Kamal Ramesh Banarasi. .. Petitioner
Vs
The State of Maharashtra and Others. .. Respondents

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Shri Rajaram V. Bansode for the Petitioner.
Mrs. M.P. Thakur, AGP for the Respondent No.1.
Ms. Shyamali Gadre along with Shri Ankit Kulkarni and Shri Abhijeet
Deshmukh i\b Little & Co for the Respondent No.2.
Shri Makarand Mandavgade, S.D.O along with Shri Malvankar, S.O.,
Court Receiver, High Court, Bombay.

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CORAM : A.S. OKA & A.A.SAYED, JJ
DATED : 10TH JUNE 2016

PC.

1. Not on board. Taken on board.
2. Heard learned counsel appearing for the Petitioner. The Petitioner in this Petition under Article 226 of the Constitution of India is claiming to be the Occupant of the Room No.401, 4th Floor of Bhagat-G Apartment, Navi Mumbai, District – Thane. The action of demolition of the building was initiated by the third Respondent which is the Planning Authority for the area. The present Petitioner and Others filed Writ Petition No.12195 of 2015 in this Court for challenging the action of demolition on the basis of the notice under Sub-section (1) of Section

53 of the Maharashtra Regional and Town Planning Act, 1963 (for short “the MRTP Act”). The said Writ Petition No.12195 of 2015 was rejected on 10th December 2015. The Petitioners therein including the present Petitioner gave undertakings to this Court to vacate the premises in their respective possession by 31st December 2015 and to hand over vacant and peaceful possession thereof. With the consent of the Petitioners, the Court Receiver, High Court, Bombay was appointed as the Receiver of the building. While dismissing the said Petition, this Court directed that in the event of the failure of the Petitioners to vacate the premises in their possession and hand over possession thereof to the third Respondent on or before 31st December 2015, the Court Receiver shall take forcible possession of the premises in possession of the Petitioner.

3. The learned counsel appearing for the Petitioner at the outset submitted that this is virtually a Mercy Petition filed by the Petitioner. He invited our attention to the documents annexed to the Petition from Pages 40 onwards. He pointed out that the present Petitioner was diagnosed for carcinoma of right breast and she was advised treatment including chemotherapy. He submits that considering the serious ailment suffered by the Petitioner, by way of indulgence, time to vacate the premises be extended till 31st October 2016. He stated that the Petitioner who is present in Court undertakes

to Court that even if the Government of Maharashtra comes out with a policy whether in the form of a legislation or otherwise for regularization of the unauthorized constructions including the building in question, notwithstanding the fact that the benefit is available to the Petitioner, she along with the members of her family will vacate the premises and hand over the same to the Court Receiver on or before 31st October 2016. Accordingly, he tenders an undertaking of today's date on oath of the Petitioner.

4. As far as the illegality of the building in which the premises in possession of the Petitioner are situated is concerned, it is an admitted position. The Petitioner has given an unconditional undertaking to vacate in the earlier Petition the possession of the premises on or before 31st December 2015. It is only in view of the exceptional circumstances in the form of medical condition of the Petitioner that we are persuaded to show indulgence notwithstanding the earlier orders and earlier undertakings. Only on the ground of medical condition of the Petitioner that this Court is showing indulgence. Moreover, there is a solemn undertaking given by the Petitioner that even if the State Government regularizes the building in which the premises in her possession are situated, the Petitioner will not take advantage of any such policy of regularization and will vacate the premises as per her undertaking notwithstanding the fact of such policy whether in the form of a legislation or otherwise. Only in view of these

two factors that we are granting time to the Petitioner to vacate the premises on or before 30th October 2016.

5. We hasten to add here that the indulgence shown is by way of medical condition of the Petitioner and all others who have given undertakings to this Court will not be entitled to take benefit of this order.

6. Hence, we pass the following order:

ORDER :

- (a) Undertakings given by the Petitioner through her Advocate as well as the undertaking in writing dated 10th June 2016 (marked "A1" for identification) are accepted;
- (b) In the peculiar facts of this case, we direct that the Petitioner shall not be evicted till 30th October 2016 by the Court Receiver;
- (c) We make it clear that if the Petitioner or any person found in possession declines to vacate the room

described in the written undertaking (marked “A1” for identification) and hand over peaceful possession thereof to the Court Receiver on or before 30th October 2016, immediately thereafter, the Court Receiver shall take forcible possession of the said premises by using necessary police force. The officer in-charge of the concerned local police station shall ensure that adequate police protection is provided to the Court Receiver to ensure the Court Receiver to take forcible possession of the premises in question;

- (d) All concerned to act upon an authenticated copy of this order.

(A.A. SAYED, J)

(A.S. OKA, J)