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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1409 OF 2016

IN

WRIT PETITION NO.5215 OF 2013

Shirish M. Deshmukh and Ors. ..Applicants.

V/s.

Gajanan Developers through
Partners and Ors. ..Respondents.

Mr.Manoj M.Badgujar for the applicants.

Mr.Samrat K.Shinde i/b. Tejas D.Deshmukh for the petitioner in
WP/5215/2013.

Mr. P.G.Sawant, AGP for respondent-State.

**CORAM : A.S.OKA AND
A.A.SAYED, JJ.**

DATED : 21ST OCTOBER, 2016

P.C. :-

1. Perused the judgment and order passed by this Court dated 27th January, 2016. The order of demolition in relation to 54 flats on 5th , 6th and 7th floor of building A1, B1 and B2 has become final. Even the order refusing to regularise the construction of illegal floors has attained finality.

2. When this application filed by the occupants of the five flats came up before the Court, the learned counsel had pointed out that large number of the flats out of 54 flats were occupied and, therefore, the applicants produced undertakings of some of the occupants though they were not before the Court. The prayer made in the application on humanitarian grounds is for grant of extension of time to vacate the premises. Time of four months was already granted to vacate the premises under the judgment and order dated 27th January, 2016.

3. Today, a letter dated 20th October, 2016 is tendered across the bar by the learned AGP. The said letter is addressed by Tahsildar, Pune City to the Government Pleader which is taken on record and marked 'Z1' for identification. It records that out of 54 illegally constructed flats, the possession of 45 flats have been taken over by the State Government and only 9 flats are occupied. The learned counsel appearing for the applicants submits that even protection may be granted in relation to the four flats though the flat purchasers thereof are not parties to this application as applicants. However, the learned AGP states that the four

flats are not in possession of flat purchasers but they are in possession of their respective tenants / licensees. Therefore, no relief can be granted as regards the four flats.

4. The applicants have filed undertakings. They have sought time to vacate till 27th April, 2017. They have no objection for appointment of Court Receiver in respect of the flats in their possession. They are ready and willing to hand over the vacant possession of the flats to the Court Receiver on or before 27th April, 2017. There is also an undertaking given by them that even if the State Government comes out with a policy for regularization, the applicants will not apply for regularization and will not seek benefits of the said policy or the statute providing for regularization. We accept the undertakings.

5. As the applicants are occupying the residential flats with their families, only by way of indulgence, we propose to grant time to vacate their respective premises / flats till 27th April, 2017. Moreover, they have agreed for appointment of Court Receiver and they have given undertakings not to apply for regularization.

6. Some grievance is made across the bar that though certain flat purchasers have vacated the flats and applied for withdrawal of the amounts as per clause 2 of paragraph 21 of the judgment of this Court dated 27th January, 2016, the amounts have not been disbursed to them for want of registered agreements for sale. The amounts paid by the respective flat purchasers to M/s.Gajanan Developers are on record. Registrar, Judicial-I will have to satisfy himself that the persons who have applied for withdrawal are the flat purchasers. The Registrar, Judicial-I will have to satisfy about the identity of the applicants. If there are no written agreements for sale, he will have to satisfy himself on the basis of with the material placed on record that the person claiming to be a flat purchaser is entitled to refund.

7. Hence we dispose of the application by passing the following order :-

- (i) All undertakings of the applicants already on record are accepted;
- (ii) By consent of the applicants, we direct that the learned

Civil Judge, S.D. Pune shall appoint any officer of the Court or a member of the Bar as the Receiver of the flat Nos.508 and 608 in A1 building and flat No.605 in B-1 building and flat Nos.505 and 506 in B-2 building. The Court Receiver so appointed will take formal possession of the aforesaid flats without disturbing the possession of the applicants;

- (iii) The remuneration of the Court Receiver will have to be paid by the applicants as per the order which may be passed by the learned Civil Judge, S.D. Pune. For the time being, the applicants shall deposit a sum Rs.5,000/- in the Court of the Civil Judge, S.D. Pune towards the charges of Court Receiver;
- (iv) The undertaking of the applicants are accepted. In view of the undertakings, the applicants shall hand over the vacant and peaceful possession of the flats in their possession to the Court Receiver on or before 27th April, 2017;
- (v) In the event of the failure of the applicants to hand over the possession within the stipulated time, the Court Receiver appointed under this order shall take forcible possession of the flats subject matter of this application,

by dispossessing the persons found in possession;

- (vi) In such event, the Officer In-charge of the concerned local police station shall provide adequate police protection to the Court Receiver for taking over the possession;
- (vii) The office of the Collector shall provide the necessary staff to assist the Court Receiver for taking over the possession. After taking over the possession by the Court Receiver, he shall hand over the same to the Tahsildar, Pune City. On handing over the possession of the said flats, the Court Receiver shall stand discharged;
- viii) The possession shall be taken over by the Collector of the four remaining flats after 5th November, 2016 and in any case before the end of November, 2016;
- (ix) The application is disposed of in the above terms;

(A.A.SAYED, J.)

(A.S.OKA J.)