

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12762 OF 2015

Shri Dattatray Padmakar Koli

... Petitioner.

V/s.

The Chief Executive Officer & Ors.

... Respondents.

Mr. Anil Dsouza, Advocate for the Petitioner.

Ms. Shyamali Gadre a/w. Mr. Ankit Kulkarni i/by Little & Co.
for Respondent Nos. 1, 3 and 4.

Mr. A.S. Kaningdhvaj i/by Mr. Sandeep V. Marne for
Respondent No.2.

Mrs. M. P. Thakur, AGP, for Respondent No.5.

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

DATE : 18th JANUARY, 2016.

P.C. :

1 Heard the learned counsel appearing for the Petitioner and the learned counsel appearing for Respondent Nos.1,3 and 4. Learned AGP represents the Respondent No.5-State. Even second Respondent is represented by an Advocate.

2 Learned counsel appearing for the Petitioner has produced copies of the undertaking dated 12th January, 2016 filed by the Petitioner. Registry shall ensure that the original undertaking is kept on the file.

3 Learned counsel appearing for Respondent Nos. 1, 3 and 4 states that the Petitioner has not disclosed - whether he is the owner of the structure. He has not disclosed his right to occupy the structure in question. He states that the names of the other occupants are not disclosed.

4 Learned counsel appearing for the Petitioner states that the Petitioner is in possession of certain parts of the structures, which are the subject matter of the impugned notice in the petition. He points out that the Petitioner is the son of one Padmakar Koli, who is no more.

5 The contents of the undertaking show that the Petitioner has accepted correctness and legality of the final notice dated 5th December, 2015, which is addressed to the Petitioner and that he has given undertaking to demolish the structures subject matter of the final notice dated 5th December, 2015. He has sought time to do so till 31st March, 2016.

6 By accepting the undertaking, the Petition deserves to be disposed of, subject to the condition of the Petitioner filing further affidavit/undertaking disclosing precise area in his possession as well as disclosing precise area in possession of the various tenants/occupants with the names of the tenants/occupants. If such affidavit is not filed within the

specified time, the protection granted to the Petitioner shall stand vacated.

7 As the Petitioner has accepted the correctness of the final notice dated 5th December, 2015 (Exh. D to petition), this petition need not be kept pending and is disposed of by passing the following order :

ORDER

- i. We accept the undertaking dated 12th January, 2016, filed by the Petitioner ;
- ii. The action of demolition shall not be taken on the basis of final notice dated 05th December, 2015, subject to the condition of the Petitioner filing in this Court within the period of three weeks from today a detailed affidavit, disclosing the precise area in his exclusive possession and disclosing the precise area in possession of the tenants/ occupants as well as the names of the respective tenants/ occupants ;
- iii. In view of the undertaking filed by the Petitioner, the Maharashtra Industrial Development Corporation shall not take any further action on the basis of the final notice dated 5th December, 2015 (Exh. "D" to the petition) till 31st March,

2016. On the failure of the Petitioner to file a detailed affidavit, as directed above, within the period of three weeks from today, the protection granted to the Petitioner will cease to operate on the expiry of the period of three weeks from today. In such event, it will be open for the Maharashtra Industrial Development Corporation to take action of demolition on the basis of the final notice dated 5th December, 2015 ;

- iv. In the event, the Petitioner does not comply with the direction of filing additional affidavit or he fails to implement the undertaking on or before 31st March, 2016, on 1st April, 2016 or any date thereafter, it will be open to the Maharashtra Industrial Development Corporation to take action of demolition of the structure subject matter of the final notice dated 5th December, 2015. The officer incharge of the local Police Station shall provide necessary police protection and assistance for the purpose of carrying out the demolition ;
- v. The Petition is disposed of with the aforesaid directions.

(C.V. BHADANG,J.)

(A.S. OKA, J.)