

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 63 OF 2015
in
CONTEMPT PETITION NO.573 OF 2013

Jamuna Tower Co-operative Society Ltd. .. Applicant.

In the matter between -

Mira Bhayander Municipal Corporation. .. Petitioner

Vs

The State of Maharashtra .. Respondent

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Shri Shriram S. Kulkarni for the Applicant.

Shri N.R.Bubna for the Petitioner in CP

Mrs. M.P. Thakur, AGP for the State.

Shri Dilip Shukla i/b Shri P.V. Nichani for the Respondent No.2.

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

DATED : 25TH JANUARY 2016

PC.

1. There is a typographical error in the order dated 14th January 2016. The name of Mrs. M.P. Thakur be shown as AGP appearing for the State.

2. It is pointed out that the undertakings in terms of the Paragraph 4 of the order dated 22nd December 2015 have been filed. However, it is pointed out by the learned counsel appearing for the Petitioner that in Clause 3 of the undertakings, it is provided that the

members of the Applicant will vacate their premises only after a proposal for regularization is finally rejected.

3. The direction of this Court was to give an undertaking that if Application for regularization is rejected, the members of the Applicant Society will unconditionally vacate their respective premises within the time specified by the Court and hand over the possession thereof to the Municipal Corporation.

4. Learned counsel appearing for the Applicant seeks time of six months to file application for regularization. The building has been unauthorisedly constructed and, therefore, such a long time cannot be granted. We, therefore, propose to grant time of three months to the Applicants to make applications for regularization of the building. We make it clear that no further time will be granted. Accordingly, the Application is disposed of by passing the following order.

ORDER :

- (a) We direct that fresh undertakings shall be filed by all the members of the Applicant Society by modifying the Clause 3 of the undertakings already filed. Clause 3 thereof to provide that if Application for regularization made by the Applicant is rejected,

each occupant will hand over vacant and peaceful possession of the premises in his possession to the Municipal Corporation within the time specified by this Court from the date of communication of the order made on Application for regularization. Modified undertaking shall be filed within a period of three weeks from today;

- (b) We grant time of three months to the Applicants to make an Application for regularization of the building. We make it clear that the time of three months will not be extended further;
- (c) If all members of the Applicant Society file modified undertakings within a period of three weeks from today, the building shall not be demolished by the Mira Bhayander Municipal Corporation till the date on which the decision on the Application for regularization is made by the Municipal Corporation is communicated to the Applicant or licensed Architect of the Applicant, whichever is earlier;

- (d) If the Application for regularization is rejected, the Municipal Corporation shall ensure that the order is communicated to the Applicant and/or to the Applicant's licensed Architect within a period of one week from the date on which the Application is rejected;
- (e) In terms of the undertakings given by all the members of the Applicant Society, the possession of the flats/premises in the building shall be handed over to the Mira Bhayander Municipal Corporation or to the Court Receiver within a period of three months from the date on which the order is communicated to the Applicant or to the Licensed Architect of the Applicant, whichever is earlier;
- (f) If the possession of any of the premises/flats is not handed over within the stipulated time, the Court Receiver shall take forcible possession of the premises/flats with the help and assistance of the police;

- (g) On the Application being made by the Court Receiver to the officer in-charge of the concerned Police Station, adequate number of police personnel shall be deputed to protect and assist the office staff of the Court Receiver for taking over possession;
- (h) On recovery of the possession of the flats/premises in the building, the office of the Court Receiver shall place the Mira Bhayander Municipal Corporation in possession thereof to enable it to take steps for demolition;
- (i) On the failure of the Applicant to make an Application for regularization within a period of three months from today, the protection granted under this order shall cease to operate and the Court Receiver shall take immediate steps for taking possession of the entire building by dispossessing the persons who are found in possession of the premises/flats in the said building. Even in such case, the officer in charge of the concerned local Police Station shall provide necessary assistance and help to the office of the Court Receiver;

- (j) Needless to add that on failure of all the members of the Applicant to file fresh undertakings within a period of three weeks from today, the Court Receiver shall take steps to take physical possession of every premises in the building as directed above;
- (k) Copies of fresh undertakings shall be supplied by the Advocate for the Applicant to the office of the Court Receiver as well as the Mira Bhayander Municipal Corporation.
- (l) All contentions on the Application for regularization are kept open;
- (m) The Application is disposed of on above terms;

(C.V. BHADANG, J)

(A.S. OKA, J)