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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION NO.10 OF 2013

Prakash Rajaram Surve & Anr. ...Petitioners
vs.
Maharashtra Housing & Area
Development Authority & Ors. ...Respondents

None for the Petitioners

Mr.Vishwajit Sawant for the respondent No.1

Mr.Y.R.Mishra for respondent No.10

Mr.P.K.Dhakephalkar, Senior Counsel with Mr.Sanjay
Udeshi and Netaji Gawade i/b Sanjay Udeshi & Co. for
intervenor.

CORAM : A.S.OKA, &
P.D.NAIK, JJ.
DATE : APRIL 12, 2016

P.C.:

1 The learned counsel appearing for the first respondent-MHADA tendered an affidavit of Shri Sanjay Vasudev Varade, the Deputy Engineer of the first respondent which is dated 11th April 2016. In paragraph 3 of the said affidavit, it is stated that the Resolution No.6077 dated 23rd August 2004 which is challenged by way of prayer clause (a) has been cancelled by the first respondent by a Resolution dated 7th August 2014. It is further pointed out that by order dated 2nd July 2015 passed by the learned Judge of the City Civil Court, Notice of Motion No.1455 of 2011 has been made absolute and the consent decree dated 5th May 2005 passed in S.C.Suit No.6786 of 2002 has been set aside. The

learned senior counsel appearing for the applicant in Chamber Summons No.90 of 2015 states that they have challenged the order passed by the City Civil Court on 2nd July 2013 by filing a Writ Petition No.7926 of 2013 and the said Writ Petition is pending. However, this Court has not granted stay to the order dated 2nd July 2013.

2 Prayer clause (b) is for challenging the consent terms dated 5th May 2005 filed pursuant to the Resolution dated 23rd August 2004 bearing No.6077. Now the consent Decree on the basis of the consent terms has been set aside and the Resolution dated 23rd August 2004 has been cancelled.

3 In the affidavit of Shri Sanjay Vasudev Varade, the Deputy Engineer of the first respondent, it is claimed that the possession of the land allotted to the second respondent has been taken over by the first respondent on 7th December 2005. Reliance is placed on the Possession Panchnama drawn on the same day. The correctness of this factual aspect is disputed by the learned senior counsel appearing for the applicant in Chamber Summons No.90 of 2015. He states that a Civil Application is filed in the pending writ petition for challenging the aspect of taking over possession.

4 Therefore, all possible steps have been taken by the first respondent. Hence, at this stage, no relief can be granted in this PIL. In view of the statements made in the affidavit of Shri Sanjay

Vasudev Varade, the Deputy Engineer of the first respondent and subject to the contentions raised by the applicant in the Chamber Summons No.90 of 2015, we dispose of this petition.

5 We, however, make it clear that the issue of legality and validity of the order dated 2nd July 2013 passed by the City Civil Court as well as issue of correctness, legality and validity of the factum of taking over possession is also kept open.

6 If occasion arises in future, it will be open for the petitioners to file a fresh PIL seeking appropriate reliefs.

(P.D.NAIK,J.)

(A.S.OKA,J.)