

WRIT PETITION NO.6995 OF 2015

Raosaheb P. Kharate and ors	...	Petitioners
V/s.		
Vinod Lalsing Thakur and ors	...	Respondents

Mr. Vinod N. Tayade, for the Petitioners.
Mr. A. M. Kulkarni, for Respondent No.1.
Mr. S. M. Kamble, for Respondent Nos 2 to 4.
Ms. R. A. Salunkhe, AGP for Respondent State.

**CORAM : NARESH H. PATIL &
DR.SHALINI PHANSALKAR-JOSHI, JJ.**

DATE : 3rd MAY, 2017.

P.C. :

1] By this petition, petitioners pray for the following prayers:-

(a) Rule be issued.

(b) that this Hon'ble Court be pleased under Article 226 of the Constitution of India to issue writ of mandamus and or writ in the nature of mandamus, order or direction directing the Respondent Nos 2 to 4 to take appropriate action against the Respondent No.1 and direct him to comply with the requirements under the

Ulhasnagar Act, 2007 to regularize the structure of the building known as Shri Sai Darshan Apartment situate at Block No.242/483, Sambhaji Chowk, Ulhasnagar-4, within the local limits of Respondent No.2 and further direct the Respondents to protect the structure by allowing the petitioners to erect temporary shed to protect it from monsoon;

(c) that this Hon'ble Court be pleased to issue writ of mandamus, writ in the nature of mandamus, order or direction directing the Respondent No.2 and 3 to remove the debris lying on the terrace and on the ground floor of the Shri Sai Darshan Apartment and recover the costs of the same from Respondent No.1”.

2] We have perused the order dated 14th December, 2007, passed by learned Single Judge of this Court [Coram: S.C.Dharmadhikari, J.] in Writ Petition No.7349 of 2002. Paragraph Nos. 7 and 9 of the said order reads thus :-

“7. After taking instructions, Mr. Kumbhakoni makes a statement that the second Respondent applied for regularization, paid the compounding fees and the subject structure has been regularized. Since the compounding fees are now paid, formal orders are now awaited, but the Corporation in particular has approved the proposal for

regularization.

9. Even otherwise, in the light of these developments nothing fruitful will be achieved by going in to the merits of the controversy. The entire issue has become academic. In such circumstances, it would be appropriate to protect the petitioners occupation in terms of the order passed by this court and continued from time to time. In other words, until and unless the final orders on the Regularization proposal are issued, the structure occupied by the petitioners shall not be demolished. The parties to abide by the final orders on Regularization. The Corporation to take final decision on this Application, if pending, within a period of three months from today. Until, then the the ad-interim order will continue”.

3] Counsel appearing for the petitioners submits that by communication dated 27.1.2015, Ulhasnagar Municipal Corporation has informed that certain compliances are required to be made for regularization and therefore, formal order could not be issued. It is also informed that, in case, petitioners desire to challenge the order by filing an appeal before appropriate forum, they may do so within 30 days. Learned counsel for respondent corporation submits that

no such appeal came to be filed. The grievance of the petitioners is that debris which is lying near the subject structure, is not removed by the developer respondent No.1 herein.

4] It is submitted that respondent No.1 is seeking multiple adjournments on one or the other pretext. Counsel for petitioners, therefore, seeks direction to respondent No.1 and Respondent Corporation to the effect that respondent No.1, if failed to remove debris, then the Corporation shall remove debris and recover charges from respondent No.1.

5] It is submitted by learned counsel for respondent corporation that some of the floors have been demolished as the subject structure was illegally constructed. Special Civil Suit No.203 of 2015 is filed in respect of subject premises.

6] Even if the Corporation has not filed reply, learned counsel for respondent corporation submits that under the directions of this Court, Corporation would take necessary steps to remove debris and recover the charges from respondent No.1.

7] Counsel for respondent No.1 submits that debris lying is not debris of demolition of some of the floors of the building. In other words, respondent No.1 disputes the statement made by the

petitioners in respect of removal of debris.

8] In the fact situation we are not inclined to enter into the issue relating to factual dispute between the parties. We find that despite order passed by learned Single Judge of this Court, the parties are litigating on some or the other issues. We leave it to the contesting parties to resort to appropriate alternate remedies before appropriate forum.

9] Without expressing any opinion on the merits of the matter, we dispose of this petition by keeping all issues open.

10] If any representation is made by the petitioners for adopting temporary measures in view of rainy season, then the respondent corporation would look into such representation and take appropriate decision expeditiously.

11] Petition is disposed of in above terms.

[DR.SHALINI PHANSALKAR-JOSHI, J.] [NARESH H. PATIL, J.]