

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

WRIT PETITION NO. 6834 OF 2017

Everest Garden Co-operative Housing Society .. Petitioner
Vs
The State of Maharashtra & Ors. .. Respondents

***WITH
WRIT PETITION NO. 6836 OF 2017***

Sai Kripa Co-operative Housing Society Ltd. .. Petitioner
Vs
The State of Maharashtra & Ors. .. Respondents

***WITH
WRIT PETITION NO. 6838 OF 2017***

Swastik Co-operative Housing Society Ltd. .. Petitioner
Vs
The State of Maharashtra & Ors. .. Respondents

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Mr. Kevic Setalwad, Senior Advocate a/w Ms. Reshma Chitnis i/b. M/s. Chitnis Vaithy & Co. for the Petitioner in all writ petitions.
Mr. Manish M. Pabale, AGP for the Respondent No.1 in all writ petitions.
Mr. N. R. Bubna for the Respondent No.2 in all writ petitions.

***CORAM : A. S. OKA &
SMT. VIBHA KANKANWADI, JJ.***

DATE : 02/08/2017.

P.C. :

1] Heard the learned senior counsel appearing for the Petitioner. These three petitions relate to three distinct buildings in respect of which notices have been issued by the 2nd Respondent under

Section 268 of the Maharashtra Municipal Corporations Act, 1949. According to the 2nd Respondent, the three buildings subject matter of these three petitions fall in C-I category. That is the reason why an action was initiated under Section 268 of the said Act, on the ground that the buildings are in dilapidated condition and are likely to collapse. The Petitioners were called upon to vacate the said buildings as the buildings are required to be demolished by the 2nd Respondent.

2] During the course of hearing, the admitted position which emerged was that at the instance of the Petitioners, structural audit of the three buildings was carried out by the Veermata Jijabai Technological Institute, Mumbai. In the report submitted, the said institution opined that the structure of the building is beyond logical repairs and also unsafe for habitation. The opinion recorded in therein is that the buildings are in dilapidated condition. In fact, on the basis of the said reports of the VJTI, the Petitioner's architect address letters to the Assistant Director Town Planning of the 2nd Respondent - Municipal Corporation to declare the said buildings as dilapidated and dangerous. These two material facts were suppressed in the petitions.

3] Thus, when it was revealed that architect employed by the Petitioners had on instructions of the petitioners submitted applications to the Municipal Corporation for declaring the buildings as dilapidated and dangerous on the basis of structural audit report on VJTI, the learned senior counsel appearing for the Petitioners submitted that the members of the Petitioners be granted time to vacate the three buildings subject matter of these petitions. He submitted that longer time be granted to vacate, considering the fact that many of the members of the Petitioners have school going children.

4] The learned senior counsel appearing for the Petitioners

submitted that there was a direction issued in a Revision Application for grant of conveyance deeds to the Petitioners and the conveyance deeds are not yet executed.

5] Considering the fact that even according to the case of the Petitioners, the buildings subject matter of these petitions are in dilapidated condition which cannot be repaired, no relief can be granted in these petitions. However, considering the prayer made by the learned senior counsel appearing for the petitioners, we propose to grant time till 31st December 2017 to the occupants of the three buildings to vacate their respective premises subject to filing undertakings. The petitioners will have to display sufficiently large board on all sides of the buildings informing members of the public that the buildings are in dangerous and dilapidated condition and there is every possibility that the buildings may collapse. If such boards are displayed, the persons residing the area and passer-by will have a notice of the structural status of the buildings.

6] Hence, we dispose of petitions by passing the following order:-

- a) The petitions are rejected;
- b) Notwithstanding the rejection of the petitions, we direct the 2nd and 3rd Respondents not to take action of demolition of the buildings subject matter of these petitions subject to condition of the authorized office bearers of the petitioners as well as members and/or occupants of each premises in the buildings filing fresh undertakings on oath stating that every occupant/member shall vacate the premises in their respective possession on or before 31st December 2017 for facilitating demolition of the buildings. The

undertakings to state that they will continue to reside in their respective premises at their own risk and that in the event of fall of the building or any part thereof, they will be solely responsible for loss which may be caused to any third party. The Undertakings to further state that within a period of four weeks from today, boards of sufficiently large size shall be displayed by the Petitioners on all sides of the subject buildings informing the members of the public that the buildings are in dilapidated and in dangerous condition and there is every possibility that the buildings may collapse;

- c) Such undertakings shall be filed in this Court within a period of four weeks from today. On the failure of all the members / occupants and office bearers of the petitioner to file such undertakings within a period of four weeks from today, the protection granted as above shall stand vacated and it will be open for the 2nd and 3rd Respondents to proceed with the demolition of the buildings;
- d) Each undertaking shall specify the premises number, the area of the premises, the names of the occupants and the capacity in which the declarant is occupying the premises;
- e) The 2nd Respondent shall depute appropriate officer to the site for verifying whether the boards as directed above are displayed on all three buildings. If the Municipal Officer finds that boards have not been displayed in terms of order of this Court, it will be open

for the Municipal Corporation to move this Court for modification of this order;

- f) If the Petitioners societies in this three petitions are entitled to conveyance deeds in respect of the lands below the buildings under the provision of the Displace Persons (Compensation and Rehabilitation) Act, 1954, the concerned authority of the 1st Respondent shall expedite the execution of the conveyance deed. If the Petitioners are in law entitled conveyance deeds, the same shall be executed as expeditiously as possible and preferably within a period of two months from today.
- g) All concerned to act on an authenticated copy of this order.

(SMT. VIBHA KANKANWADI, J.)

(A. S. OKA, J.)