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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4857 OF 2018

Vikrant Chandrahas Tawade ...Petitioner
vs.
The Thane Municipal Corporation
and another ...Respondents

Mr.Pranil Sonawane I/b Mr.Bhavdeep Jadeja for the
Petitioner

Mr.N.R.Bubna for the respondent Nos.1 and 2

Ms Neeta Karnik for respondent No.3

CORAM : A.S.OKA, &
RIYAZ.I.CHAGLA, JJ.
DATE : AUGUST 9, 2018

P.C.:

. Not on board. Taken on board.

1 The prayer in this petition under Article 226 of the Constitution of India is for seeking a writ of mandamus against the first respondent-Thane Municipal Corporation enjoining the said Corporation to implement the order of demolition dated 10th June 2016 passed by the third respondent. It is not in dispute that the said order has become final.

2 On the earlier date, the learned counsel for the third respondent submitted that there is a proposal to construct a new building on the same property and as and when the construction of the new building is complete, the school which is being run

in the subject building will be shifted to the new building and the building subject matter of this petition will be demolished.

3 It appears to us from the Exhibits I and J to the petition that action of demolition was challenged by the third respondent-trust by filing a civil suit. The application for injunction made in the suit was rejected by the Civil Court. An appeal preferred by the third respondent has been dismissed by the District Court on 9th December 2016. In fact, there is no restraint order which prevents the first respondent from acting upon the order of demolition.

4 It is pointed out that the third respondent is running a school in the building subject matter of the aforesaid order for last 14 years. Though the subject building cannot be allowed to exist till the construction of new building is made by the third respondent, the students will have to be protected by granting sufficient time to the third respondent to remove the building. Today, Mr.Thankappan Nadar, Chairman of the third respondent-trust (wrongly described in the undertaking as fourth respondent) has tendered an affirmed undertaking. The learned counsel for the third respondent states that Shri Nadar who has affirmed the undertaking is personally present in the Court. The learned counsel for the third respondent states that undertaking has been tendered on behalf of the trustees of the third respondent and that Shri Nadar has been duly

authorised to file undertaking by all the trustees. The undertaking is to demolish the subject building at the cost of the third respondent on or before 1st May 2020.

5 Considering the fact that the third respondent is running a school for last 14 years and more, and considering the unconditional undertaking given by Shri Nadar, time deserves to be granted to the third respondent to remove the building subject matter of the order dated 10th June 2016 till 1st May 2020. We make it clear that extension of time will not be granted on the ground that the construction of the new building is not complete.

6 Accordingly, we pass the following order:

(I) Undertaking of Shri Nadar is taken on record and marked 'U-1' for identification and the same is accepted as the undertaking of the third respondent. In view of the undertaking, we direct that action of demolition in respect of the building subject matter of the order dated 10th June 2016 shall not be taken till 1st May 2020;

(II) We make it clear that on the failure of the third respondent to demolish the building subject matter of the said order on or before 1st May 2020, the first respondent shall demolish the said building without further notice to the third respondent;

(III)Writ Petition is disposed of on above terms.

(RIYAZ.I.CHAGLA,J.)

(A.S.OKA,J.)