

Sharayu Khot.

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

WRIT PETITION NO. 12352 OF 2015

Mohammed Nazim Abdul Hamid Ansari ...Petitioner

Versus

**Bhiwandi Nizampur City Municipal ...Respondents
Corporation And Ors.**

WITH

CIVIL APPLICATION NO. 1279 OF 2018

Haider Ali Mohd Hanif Ali Ansari & Ors. ...Applicants

In the matter between

Mohammed Nazim Abdul Hamid Ansari ...Petitioner

Versus

**Bhiwandi Nizampur City Municipal ...Respondents
Corporation And Ors.**

WITH

CIVIL APPLICATION NO. 1325 OF 2018

Mohd. Hussain Abdul Aziz & Ors. ...Applicants

In the matter between

Mohammed Nazim Abdul Hamid Ansari ...Petitioner

Versus

Bhiwandi Nizampur City Municipal Corporation And Ors. ...Respondents

None for the Petitioner.

Mr. N. R Bubna, for the Respondent No. 1.

Mr. R.S. Apte Sr Adv. i/by Mr Mayuresh S. Lagu, for the Applicants in both CAs.

**CORAM : ABHAY S. OKA AND
RIYAZ I. CHAGLA, JJ.**

DATE : 1 August 2018

ORDER :

1. In the Writ Petition under Article 226 of the Constitution of India, the prayer is for issuing a *writ of mandamus* directing the 1st Respondent (the Bhiwandi Nizampur City Municipal Corporation) to take action of

demolition in respect of an illegal construction commenced on the land more particularly described in paragraph 2. There are various orders passed from time to time in this Writ Petition.

2. The order dated 6th February 2018 notes that a complete illegal RCC construction of ground plus four floors has been made. The manner in which the 1st Respondent-Municipal Corporation defaulted is also set out in the said order. In compliance with the said order, Affidavits have been filed. The State Government has filed an Affidavit of Shri. Shankar Jadhav, the Deputy Secretary of the Urban Development Department annexing thereto directions issued on 21st June 2018 to the said Municipal Corporation by the Urban Development Department of the State Government to take action of demolition in respect of the illegal structures. Various directions have been incorporated therein. An Affidavit in Reply dated 16th March 2018 is filed by Shri. Balaram Jadhav, the Designated Officer of the 1st Respondent-Municipal Corporation accepting that the illegal construction of ground plus four floors has been carried

out. In compliance with the order dated 22nd February 2018, the same Officer has filed an Affidavit on behalf of the 1st Respondent placing on record the fact that an enquiry has been initiated against certain officers. It is stated that an enquiry officer has been appointed and the enquiry will be concluded within a period of three months.

3. Civil Application No. 1325 of 2018 is taken out by the occupants of the building setting out that they desire to apply for regularization of the building. All of them except the occupant of the Flat No. 405 have given undertakings on oath to apply for regularization. The undertakings state that in the event the application for regularization is rejected, they will unconditionally vacate their respective premises and handover the same to the 1st Respondent-Municipal Corporation within a period of six weeks from the date of communication of the order of rejection.

4. The learned Counsel appearing for the 1st

Respondent in the Writ Petition stated that all the occupants of the premises in the subject building have given such undertakings except the occupant of the Flat No. 405.

5. Considering the peculiar facts pleaded in the Civil Applications filed on behalf of the occupants and considering the undertakings given by them, a limited relief deserves to be granted to them.

6. Accordingly, we dispose of the Writ Petition along with the Civil Applications by passing the following order:-

(i) The undertakings tendered on 17th July 2018 are marked as *Exhibit U1 (Collectively)*. We accept the said undertakings;

(ii) In view of the said undertakings, the Applicants in the Civil Application No. 1325 of 2018 will be entitled to apply for regularization of the

building within a period of one month from the date on which this order is uploaded through an Architect by a prescribed mode and in a prescribed form. If such an Application is made, the 1st Respondent-Municipal Corporation shall decide the same within a period of 60 days from the date of filing of the Application. The decision taken on the Application be communicated to the Architect appointed by the Applicants in the Civil Application;

- (iii) Till the date of communication of the decision to the Architect, an action of demolition of the building shall not be taken. However, the Municipal Corporation shall, if necessary with the assistance of the police, take forcible possession of the Flat No. 405 within a period of one month from the date on which this order is uploaded;

- (iv) In the event, the Application for regularization is rejected, for a period of six weeks from the date on which the rejection is communicated to the Applicants' Architect, the action of demolition of the building shall not be taken. On the failure of the Applicants to comply with the undertakings and to handover the vacant and peaceful possession of their respective premises within a period of six weeks from the date on which the communication of the adverse order is made to their Architect, the 1st Respondent-Municipal Corporation shall take an action of dispossession of the Applicants and demolition of the building without issuing any further notice to the Applicants;
- (v) All contentions on merits of the Application for regularization proposed to be made are kept open;

- (vi) Needless to add that on the failure to apply for regularization within the stipulated time, the 1st Respondent-Municipal Corporation shall take action of dispossession and demolition;
- (vii) The Writ Petition and all pending Civil Applications are disposed of on the above terms.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]