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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1520 OF 2018
IN
WRIT PETITION NO.13603 OF 2017

Bhalchandra Dashrath Vaity & Ors.	... Applicants
<u>In the matter between</u>	
Madan Dashrath Vaity	... Petitioners.
V/s.	
Assistant Commissioner & Ors.	... Respondents.

Mr. R.S. Apte, Senior Advocate a/w Mr. Deepak Chitnis – Chiparikar i/b.
M/s. Deepak Chitnis Chiparikar & Co. for the Applicants.
Mr. Pradeep M. Patil for the Respondent Nos. 1 and 2.

CORAM : A.S.OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 30th July 2018.

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P.C.:

1 Heard the learned senior counsel appearing for the applicants and the learned counsel representing the first and second respondents. Writ petition filed by the contesting respondent in this application was disposed of by this Court by the order dated 20th March 2018 by accepting the statement made by the first and second respondents in the writ petition that action under section 351 of the Mumbai Municipal Corporation Act, 1888 (for short “the said Act”) will be initiated in respect of the illegal constructions. Accordingly, action was initiated and in fact, an order of demolition has been passed by the Municipal Corporation. On the basis of the said order, a notice dated 13th July 2018 under Section 488 of the said Act has been issued.

2 The present applicants have filed undertaking on oath dated 20th July 2018. In the undertaking, it is pointed out that the orders passed under Section 351 of the said Act have been challenged by the applicants by filing civil suits. There is an undertaking given to withdraw the said civil suits. It is stated in the undertaking that the applicants intend to apply for regularisation of the structures subject matter of the orders passed under Section 351 of the said Act by taking recourse to Section 52-A of the Maharashtra Regional and Town Planning Act, 1966 and the Rules framed thereunder under the title of the Maharashtra Town Planning (Compounded Structures) Rules, 2013 (for short “the said Rules”). There is an undertaking given by the applicants that in the event, the application for regularisation is rejected, they will demolish the entire building or part of which it is not regularised on their own.

3 The very fact that this civil application has been filed and undertakings have been given by the applicants show that applicants have accepted the correctness of the notices issued under Section 351 of the said Act by the Brihanmumbai Municipal Corporation and orders passed of demolition. The applicants are claiming to be residing in the subject building/ structure. It is only in view of the undertaking that a limited relief deserves to be granted to the applicants. Accordingly, we dispose of the application by passing the following order :-

ORDER

- (i) Undertaking of the applicants taken on record on 20th July 2018 is hereby marked as “U-1” for identification.
We accept the undertakings of the applicants therein;

- (ii) In view of the undertakings, it will be open for the applicants to make an application for regularisation of the building by taking a recourse to Section 52-A of the MRTP Act and the said Rules of 2013 within a period of six weeks from today. If such application is made, the same shall be decided by the concerned authority of the Mumbai Municipal Corporation as expeditiously as possible and in any event within a period of 60 days from the date of filing the application;
- (iii) Order passed on the application be communicated to the applicants. If the applicants apply through an architect, the order passed shall be communicated to the applicants' architect. Till the date of communication of the order to the applicants or their architect, as the case may be, the orders dated 14th June 2018 passed under Section 351 of the said Act shall not be implemented;
- (iv) If the application or applications for regularisation are rejected in its entirety or in part, action of demolition shall not be taken for a period of four weeks from the date of service of the said order to the applicants' architect or to the applicants, if they have not appointed architects, to enable the applicants to act upon the undertakings incorporated in clause 4 of the undertaking marked as 'U-1';

- (v) On failure of the applicants to abide by the undertakings within the said stipulated period of four weeks, the Municipal Corporation shall take action of demolition without serving any further notice to the applicant. On the failure of the applicants to apply for regularisation within a period of six weeks from today, it will be open for the Municipal Corporation to implement the order dated 14th June 2018;
- (vi) All contentions on merits of the application for regularisation made by the applicants are kept open;
- (vii) Civil Application is disposed of on above terms;
- (viii) If the suits filed by the applicants are not withdrawn within a period of one week from today, it will be open for the Municipal Corporation to apply for modification of this order.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)