

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****REVIEW PETITION (ST) NO.27553 OF 2018**

Nagesh Rajaram Samant.

...Petitioner

vs

1.Dr.Surekha Kashinath Bhalerao & Ors.

...Respondents

AND**REVIEW PETITION (ST) NO.27557 OF 2018**

Ashok Tukaram Shinde & Ors.

...Petitioners

vs

1.Dr.Surekha Kashinath Bhalerao & Ors.

...Respondents

Mr.S.A.Sawant I/b. Mr.S.H.Biradar, for the Review Petitioners in Review Petition (st) No.27557/18.

Mr.Kalpesh Patil, for the Review Petitioner in Review Petition (st) no.27553 of 2018.

Mr.P.P.Kakade, AGP for Respondent No.2-State.

Mr.Niranjan A.Mogre, for the Original Petitioner.

**CORAM : NARESH H.PATIL ACTING C.J &
G.S.KULKARNI, J.**

DATED: 27th September,2018

P.C.:-

1. Heard the learned Counsel for the Review Petitioners.
2. These are the petitions filed seeking review of our order dated 23 August 2018 passed in Writ Petition No.10697 of 2017 whereby

following the mandate of law as laid down by the Supreme Court in the case “*M.I.Builders Pvt. Ltd. Vs. Radhey Shyam Sahu & Ors.*”¹ and “*Friends Colony Development Committee vs. State of Orissa & Ors.*”², we have allowed Writ Petition No.10697 of 2017 of the land owner observing that the building in question is brazenly illegal and unauthorized as the developers undertook construction of the said building without obtaining any permission and therefore, the building deserved to be demolished. The writ petition was allowed in the following terms:-

- “a) The Writ Petition stands allowed.
- b) The Corporation shall issue notice of 15 days to the occupants of the building to vacate the premises.
- c) If the occupants do not vacate, the Municipal Corporation shall take police help to remove the occupants.
- d) On the building being vacated, the Corporation shall undertake demolition of the building.
- e) After the demolition, cost of demolition and incidental expenses shall be recovered from respondent no.3, which if not paid shall be recovered as arrears of land revenue.
- f) No Civil Court shall entertain any suit or proceedings filed by any person in connection with the subject matter of this order.

3. Review Petition (st) No.27557 of 2018 is filed by some of the alleged flat purchasers. It is not in dispute that total 49 tenements were constructed out of which it was alleged that 24 flats were handed over to the alleged flat purchasers. The petitioners in review petition claim to be these flat purchasers. These review petitioners are seeking a review of our

1 (1999)6 SCC 464

2 (2004)8 SCC 733

order principally on the ground that they are bonafide purchasers and that all attempts are being made to regularise the building and steps in that direction are being taken.

4. The other Review Petition (st) No.27553 of 2018 is filed by Mr.Nagesh Rajaram Samant who is now claiming to be a land owner. The grounds in both these review petitions are verbatim and/or identical.

5. The petitioners do not dispute that M/s.Prajapati Constructions-Respondent No.4 had undertaken construction of the building without seeking any permission from the Corporation, and that the entire building is brazenly illegal. However, the contention is that an opportunity be granted now to the review petitioners to regularize the construction.

6. We may observe that the illegality of the building was not something which was unknown to the review petitioners and all concerned including the developers. It is also not the case that any owner of the land had ought for any building permission. It is also not in dispute that the Municipal Corporation has issued notices qua this illegal construction and it cannot be said that the review petitioners who have intention to hang on to the unauthorised constructions, were not aware about all these proceedings, which the Corporation was taking from time to time. The

Corporation had also sought for police protection on the earlier occasion. It is also not in dispute that the developer had approached the Municipal Corporation for regularization and the said application was rejected. Now these review petitioners say that they want to make an attempt for regularization. We are afraid that such indulgence cannot be granted and to this effect we have already made the following observations in paragraphs 12 and 13 of the order under review:-

“12.... The filing an application for regularisation of an illegally constructed building of such a magnitude is no answer to the fact that respondent no.3 could with impunity without seeking commencement certificate go ahead to construct a huge building of seven storey. In these premises taking into consideration the above stated view of the Apex Court and the facts brought before this Court, we are required to deal with the issue.

13. The learned Counsel appearing for Corporation had made it clear that the Corporation has rejected the application for regularisation and they would now proceed to take necessary steps to demolish the structure. The learned Counsel appearing for Corporation submits that the communication of rejection of application for regularisation has been served on Architect Durvesh Thasche.”

7. In the above circumstances, no case is made out for review of our order dated 23 August 2018 passed in Writ Petition No.10697 of 2017. There is no error apparent on the face of the order to exercise jurisdiction under the provisions of Order 47 Rule 1 of the Code of Civil Procedure.

8. The Review Petitions are accordingly rejected. No costs.

9. The Review petitioners are free to institute proceedings against the developer for recovery of damages

Prashant
Vilas Rane

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Prashant Vilas Rane
Date: 2018.09.27
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(G.S.KULKARNI, J)

(ACTING CHIEF JUSTICE)