

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 471 OF 2018
IN
REVIEW PETITION NO. 106 OF 2018
IN
WRIT PETITION NO. 9058 OF 2016

Tungareshwar Academy Trust and another.	...	Applicants.
In the matter between		
Tungareshwar Academy Trust and another.	...	Petitioners.
V/s.		
State of Maharashtra and others.	...	Respondents.

Mr.Uday P. Warunjikar for the applicants.
Mrs.R.A.Salunkhe, AGP for respondent Nos.1 to 3.
Ms.Swati Sagvekar for added party respondent No.4.

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

DATE : 1st November 2018.

P.C.:

On the prayer made by the learned counsel for the applicants, we permit impleadment of Vasai Virar City Municipal Corporation as respondent No.4.

2. Heard the learned counsel appearing for the parties. This is a classic case which shows as to how a litigant tried to take undue advantage of the leniency shown by the Court. The applicants encroached upon a government land and carried out illegal construction of a building. The fourth respondent- Municipal Corporation served a

notice under sections 52 and 53 of the Maharashtra Regional and Town Planning Act, 1966 to the applicants calling upon them to remove the illegal construction. Therefore, the applicants filed Writ Petition No.9058/2016. It will be necessary to make a reference to the judgment and order dated 12th July 2017 passed in the said writ petition by which the writ petition was rejected. Paragraphs-4 to 6 of the said judgment and order read thus:

“4 Thus, the petitioner has illegally and high-handedly encroached upon the land vested in the Government. Though application is made by the petitioner in the year 2008 to the Collector for grant of the said land, for last 9 years, no such grant has been made by the Collector. Not only that the petitioner is an encroacher on Government land, the petitioner has specifically claimed that initially 29 classrooms were constructed to which 11 classrooms were added subsequently. The petitioner has claimed that in response to the appeal made by the Hon'ble Prime Minister for celebrating the Yoga Day, the petitioner constructed a shed obviously without obtaining permission. We must record that the appeal by the Hon'ble Prime Minister does not entitle anybody to make illegal construction for celebrating the International Yoga Day.

5 We are shocked to note that by granting admission to the several students as claimed by the petitioner, their educational career is seriously jeopardized by the petitioner.

6 In our view, the petitioner deserves no protection. Even permission to apply for regularization of the construction cannot be granted as the petitioner has encroached upon the Government land. Though there is absolutely no merit in the Petition, considering the larger interests of the students, we propose to grant a reasonable time to the petitioner to remove the illegal

construction and to hand over vacant possession of the land to the State Government.”

(emphasis added)

3. This Court showed leniency and, based on an assurance that an undertaking will be filed by the trustees of the first applicant, the Court granted time to the applicants to remove the illegal structure till 30th June 2018 and hand over the possession of the encroached land to the District Collector on or before the said date. An undertaking was also agreed to be given that no further construction shall be carried out.

4. The applicants filed Review Petition (St.) No.16802/2018 and sought review of the judgment and order dated 12th July 2017. The review petition was rejected vide order dated 5th July 2018. The said review petition was filed on the ground that there is every possibility that the State Government will regularize the encroachment on the government land. Paragraphs-3 to 6 of the order dated 5th July 2018 passed in review petition read thus:

“3. The review petition is strongly opposed by the Municipal Corporation by filing a reply, placing reliance on the Panchanama dated 13th June 2018 and by annexing the photographs taken at the site. **It was stated that not only that the petitioner has not abided by the undertaking, but even for the academic year 2018-19, admissions have been given to the students in the school run in the subject building. Further it is pointed out that virtually another additional floor was constructed in breach of the undertaking given to this Court not to carry out any further construction.**

4. It is not disputed by the review petitioners that

such additional construction was carried out. Even on the last date, the learned counsel appearing for the review petitioners made a statement that the said structure will be removed. Today, a copy of Panchanama dated 4th July 2018 is tendered by the learned counsel appearing for the Municipal Corporation which records that the tin-shed construction on the first floor has been removed. However, RCC columns and iron channels are maintained as it is. The learned counsel appearing for the Municipal Corporation is justified in contending that if RCC columns and iron channels are kept as it is, there is every possibility that reconstruction will be made by the petitioner.

5. On behalf of the review petitioners, Shri Vinod Ramkrishna Verma, a Trustee has tendered an undertaking today which is taken on record and marked as “U-2” for identification. The said undertaking is to demolish the structure on or before 12th November 2018 and not to seek further extension of time for demolition of the structure.

6. **Going by the admitted facts on record, considering the conduct of the petitioner, no indulgence deserves to be shown. The petitioner has committed a gross breach of the earlier undertaking which was accepted by the judgment and order dated 12th July 2017 and has carried out illegal construction. Notwithstanding the undertaking given to remove the entire structure by 30th June 2018, even for the present academic year, admissions have been granted to the students by the petitioner. After the present review petition was filed, only when it was pointed out by the learned counsel appearing for the Municipal Corporation regarding construction of additional structure, substantial part of the same has been removed. Therefore, there would have been every justification to reject the review petition and to initiate action under the Contempt of Court Act, 1971. However, in the application for condonation of delay, it is mentioned by the review petitioners that teaching and non-**

teaching staff of the petitioner's school consists of 50 persons and some of the students belong to economically weaker section. It is only after considering the larger interests of the students that we are inclined to show indulgence in the light of the undertaking tendered today on behalf of the petitioner and marked as "U-2" for identification."

(emphasis added)

5. Thus, even after considering the conduct of the applicants of committing breaches of the undertaking, it is only in the larger interests of students that time to demolish the structure was extended. An undertaking was given by the applicants to demolish the structure on or before 12th November 2018. This Court showed indulgence even after recording in paragraph-6 of the said order that considering the conduct of the applicants, no indulgence deserves to be shown. In fact, this Court would have been justified in initiating action against the applicants under the Contempt of Courts Act, 1971 for committing breaches of the undertaking given by the applicants in terms of the order passed in the main writ petition. What prevailed at that time was only the interest of the students and teaching and non-teaching staff of the applicants' school. Now, by this civil application, the applicants are seeking grant of extension of time to demolish the building till 30th May 2019. It is the contention of the applicants that the proposal of the applicants for regularization has been approved up to highest level and only in view of the order of the Apex Court dated 16th April 2018 a copy of which is annexed at Exhibit-G, that the regularization has not taken place. The submission of the applicants is that they intend to apply to the Apex Court for clarification.

6. While disposing of the writ petition and the review petition, though this Court found that considering the gross illegal conduct of the applicants, they are not entitled to any relief, this Court granted relief. In fact, in terms of the order passed in the writ petition, the subject building ought to have been demolished on or before 30th June 2018.

7. Considering the conduct of the applicants which is noted in the earlier two orders, now it is impossible to show any further indulgence to them on the third occasion. In fact, taking out such an application is an abuse of the process of law. We, therefore, propose to direct the applicants to pay costs quantified at Rs.25,000/- to the added respondent (the Vasai Virar City Municipal Corporation).

8. Accordingly, the civil application is dismissed. The applicants to pay costs quantified at Rs.25,000/- to the added respondent No.4 (Vasai Virar City Municipal Corporation). The amount of costs shall be paid within a period of one month from the date this order is uploaded on the server.

9. Though this civil application has been dismissed, for reporting compliance regarding order of payment of costs, the same shall be listed on 14th December 2018 under the caption of direction. Even compliance regarding demolition will be considered on the said date.

(RIYAZ I.CHAGLA, J.)

(A.S.OKA, J.)