

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

WRIT PETITION NO.13366 of 2018

Shobhavati Rajaram Yadav and ors.Petitioners

versus

Vasai Virar City Municipal Corporation and ors.Respondents

Mr. S. M. Gorwadkar, senior advocate along with Mr. Navin P. Sachanandani, advocate for the petitioners.

Ms. Swati Sagvekar, advocate for the respondent Nos.1 and 2.

Mr. Sainand Chougule, advocate for the respondent No.3.

**CORAM : RANJIT MORE &
REVATI MOHITE DERE, JJ.**

DATE : 18th DECEMBER, 2018.

P. C. :

Heard learned senior counsel and learned counsel appearing for the respective parties.

2. The above petition was placed on board for admission on 27th November, 2018. On the said date, this Court passed the following order:

"1. Heard Mr. Gorwadkar, learned senior counsel for the Petitioners and Ms. Sagvekar, learned counsel for Respondent Nos.1 and 2. The Petitioners are the students and parents of the students taking education in a school run by Respondent No.3, namely, Tungareshwar Academy Trust. The Petitioners are challenging the notice dated 16th November 2018 issued by Respondent No.1 for vacating the school premises for carrying out demolition. By this notice, Respondent No.3 is directed to demolish the unauthorised

structure within seven days. Notices are issued pursuant to the directions dated 5th July 2018 given by the Division Bench of this Court in Review Petition (stamp) No. 16802 of 2018 and the order passed in Writ Petition No.9058 of 2016. While passing order dated 5th July 2018, the Division Bench of this Court took into consideration the undertaking filed by Respondent No. 3.

2. Mr. Gorwadkar, learned senior counsel for the Petitioner submitted that there are 2300 students taking education in the said school and in the event said school building is demolished, at present in the mids of academic year, it is not possible for them to shift to any other school. He submitted that students be allowed to complete their academic term for the current year, which will come to an end in April 2019 and the Petitioners have no objection if the unauthorised structure of the school is demolished thereafter.

3. The learned senior counsel for the Petitioner having taken instructions submitted that for the next academic year, the Petitioners or similarly situated students will take admission in another school and after completion of the current academic year they will not seek any protection from demolition of the unauthorised structure of their school.

4. One Mr. Vinod Verma, who is trustee of Respondent No. 3 school is present. He seeks some time to file reply as the notice of petition was received by him today only. Counsel for the Corporation too seeks time to take instructions.

5. In above circumstances, we defer hearing on the petition. Stand over to 12th December 2018. To be placed in supplementary board. Till then, Respondent No.1 as well as Respondent No.3 shall maintain status quo regarding the school building."

3. On 12th December, 2018, a common statement was made across the Bar that the academic year of the school run by the respondent No.3 would end on 1st May, 2019 and the learned counsel for the respondent No.3 also made a statement that by 5th May, 2019, the subject premises would be demolished. He also made a statement that no new students would be admitted for the next academic year and transfer certificate to the students studying in their school would be given. A statement was also made that the respondent No.3 will inform the parents of the students studying in their school that the subject premises would be demolished by 5th May, 2018. In the light of the said statements, we directed the respondent No.3 to file a written undertaking/affidavit to that effect before the returnable date and adjourned the matter to 18th December, 2018.

4. Accordingly, Mr. Vinod Ramkrishna Verma-trustee of the respondent No.3-School on his behalf and on behalf of the other trustees has filed an undertaking dated 18th December, 2018. The undertaking reads as follows :

1. *I say that I have gone through the orders dated 12th July, 2017 passed by this Hon'ble Court in Review Petition No.16802 of 2018 and the orders passed in the instant Writ Petition. I say that I had filed an earlier undertaking before this Hon'ble Court which is on record. I on behalf of Respondent*

No.3 and all other trustees tender unconditional apology for not being able to comply with the same on account of the resistance of the parents and students. I say the application made by the Respondent No.3 for allotment of land is pending before the State Government and there is a possibility of allotment of land in favour of the present Respondent No.3 herein, subject to the orders of the Apex Court. The same will take some time. The Respondent No.3 will file application for review/modification of the order's as per the liberty granted by this Hon'ble court, if the land is allotted to this Respondent by the State Government.

2. *I for myself and on behalf of Respondent No.3-Trust and other six trustee's abovenamed undertake to demolish the unauthorized structure stated in the notice dated 22/7/2016 if the allotment of land in question is not made by the State Government in favour of Respondent No.3 and the said structure is not regularised by the Respondent No.1 and/or the State Government on or before 5th May, 2019.*

3. *I for myself and on behalf of the Respondent No.3 and all the aforesaid trustees undertake that this Respondent No.3 will give respective transfer certificates to the students presently studying in the school.*

4. *I for myself and on behalf of the Respondent No.3 and all the aforesaid trustees undertake that this Respondent No.3 will inform the parents of all the students studying in their school that the subject premises would be demolished by 5th May, 2019."*

The said undertaking is accepted and is taken on record.

4. In the above circumstances, only to protect the interest of the students, we pass the following order :

1. The respondent – Corporation shall not implement/act upon the notice dated 16th November, 2018, which is impugned in this petition till 5th May, 2019.

2. The respondent No.3 – School, on their own, shall demolish the subject notice structure on or before 5th May, 2019.

3. If the respondent No.3 fails to demolish the subject structure on or before 5th May, 2019, the respondent-Corporation shall demolish the same without giving further notice and the Corporation shall recover the expenses towards demolition from the respondent No.3-School.

The petition, accordingly, stands disposed of in the above terms.

[REVATI MOHITE DERE, J.]

[RANJIT MORE, J.]