

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12081 OF 2019

Jay Kunj Co-op Hsg. Soc. Ltd

..Petitioner

Vs.

Vasai Virar Municipal Corporation

and Others

..Respondents

Mr. Mandar Limaye, for the Petitioner.

Ms. Swati Sagvekar, for Respondent Nos.1 and 2.

**CORAM:-S. J. KATHAWALLA &
B. P. COLABAWALLA, JJ.**

DATE :- NOVEMBER 26, 2019.

P. C.:

By this Writ Petition the Petitioner society has moved this Court seeking directions against the Corporation to allow them to remove the deficiencies/objections raised by Vasai Virar Municipal Corporation by notice dated 12th June, 2019 addressed to the Respondent No.3 developer, who is arrested and is behind bars.

2. The Petitioner society has 22 members. The building which was occupied by the 22 members of the society was constructed some time in 1986-1987 and an Occupation Certificate dated 20th May, 1987 was issued to the then

developer. The society thereafter entered into a development agreement with Respondent No.3-M/s. Padmavati Developers under an agreement dated 14th December, 2011. The developer constructed the new building without obtaining any permission from the Corporation. In the meantime, the Public Interest Litigation No.23 of 2017 (PIL) was filed to remove all unauthorized constructions under the jurisdiction of Vasai Virar Municipal Corporation. The said PIL was disposed of by an order dated 25th April, 2019. Paragraphs 8 and 9 of the said order are reproduced hereunder:-

“8.The second grievance pertains to construction on Plot No.4 land bearing Survey No. 377-B, Hissa No. Pt. Village Virar (W), Taluka-Vasai. The building proposed to be constructed is by the name Jai Kunj. The grievance is that the construction has commenced without the commencement certificate. The reply of the first Respondent admits such fact.

9. The reply brings out that notices have been issued to the builder. We direct the first Respondent to pass final orders pursuant to the notices issued by it and if no application for compounding of a structure is filed or if any has been filed, necessary orders to be passed in either eventuality. The building or part thereof which is found unauthorized shall be demolished.”

2 Pursuant to the said order, Respondent No.3 developer filed an application seeking regularization of the construction dated 16th May, 2019. In response thereto, the Corporation by its order dated 12th June, 2019 raised certain requisitions. In the meantime, the developer is arrested and he is behind bars since long. The developer is therefore, unable to answer/comply with the

requisitions raised by the Corporation. The Petitioners who were in possession and occupation of an authorized occupation of a building are now in a fix since the accommodation provided by the Respondent No.3 developer upon redevelopment is without obtaining necessary permissions from the Corporation. The Petitioners are therefore, innocent victims of a fraud perpetrated on them by the Respondent No.3 developer. Since the developer is behind bars, there is no-one to deal with the notice/requisitions dated 12th June, 2019 issued/raised by the Corporation. The Petitioners have, therefore, approached this Court seeking directions against the Corporation to allow them to remove the deficiencies/objections raised by the Corporation by notice dated 12th June, 2019 addressed to the developer/Respondent No.3.

3 In view of the above facts and circumstances, if the direction sought by the society is not allowed, the members of the society along with their family members who are not at fault but who are innocent victims of the fraud perpetrated on them by Respondent No.3 developer, will be rendered roofless and brought to the streets. Interest of justice, therefore, requires that the Petitioner society be allowed to remove deficiencies/objections raised by the Corporation in the notice dated 12th June, 2019 addressed to the developer. This direction will not prejudice either the Corporation or the third Respondent developer. Balance of convenience is overwhelmingly in favour of the Petitioner society and its members. Hence the following order:

- a The Corporation shall allow the Petitioner society to remove deficiencies/objections raised by Respondent Nos.1 and 2 in the notice dated 12th June, 2019.
 - b The Petitioner society is granted four months time to remove the deficiencies/objections raised in the said notice dated 12th June, 2019.
 - c In the meantime, the Corporation shall not take any coercive steps including demolition of the structure as regards which the notice dated 12th June, 2019 is issued by the Corporation. The Corporation shall also consider the proposals submitted by the Petitioner society after removal of deficiencies/objections in the notice dated 12th June, 2019.
- 4 The Petition is accordingly disposed of.

(B. P. COLABAWALLA, J.)

(S. J. KATHAWALLA, J.)