

SAS-NITIN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.608 OF 2017

Arvind Feruram Jaiswar

..Petitioner.

V/s.

The State of Maharashtra & Ors.

..Respondents.

Mr.Rohan P.Surve for the petitioner.

Mr.A.A.Parav, AGP for respondent Nos.1 & 2-State.

Mr.N.R. Bubna for respondent Nos.3 to 6.

Mr.S.M.Oak i/b. Mr.Drupad Patil for respondent No.10.

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

DATE : 11th DECEMBER, 2019

P.C. :-

1. The Division Bench of this Court [Coram: A.S.Oka and Riyaz I. Chagla,JJ.] passed an Order dated 1st November, 2018, paragraphs 12 to 14 of which are reproduced hereunder :

“12 We have considered the submissions. The respondent No.10 by filing an affidavit cum undertaking on oath dated 16th February 2018 accepted that a development permission was granted to construct ground plus two floors but he has carried out construction of ground plus eight floors. He accepted that a flat on the first floor and an office on the ground floor has been illegally occupied. He referred to the

proposal for regularization dated 6th February 2018 and gave undertaking to remove the construction if it is not regularized. He agreed to do so within one month from the date of the decision on the proposal by the Municipal Corporation. As noted in the affidavit of the Municipal Commissioner of the said Corporation, the said proposal which was treated as the one under section 52A of the MRTP Act was rejected on 18th June 2018. The Communication dated 18th June 2018 records that the proposal was under section 52A of the MRTP Act. There is nothing placed on record to show that the respondent No.10 challenged the order of rejection. In fact, Civil Application No.1462 of 2018 filed by him indicates that he submitted a fresh proposal on 7th July 2018. The prayer in the Civil Application was that till the disposal of the said fresh proposal, he may be granted exemption from complying with the undertaking.

13 The solemn undertaking given by the respondent No.10 on 16th February 2018 has not been complied with. The undertaking ought to have been complied with within one month from 18th June 2018. The respondent no.10 has committed a gross breach of the undertaking. Apart from the fact that there is a gross breach committed by him, the construction carried out by him from third to eight floors (both the floors inclusive) is completely illegal and unauthorized. In fact, that is the admitted position. If the respondent No.10 has not yet handed over possession of the premises on the first floor and ground floor premises as per his undertaking, the Court Receiver will have to be directed to take forcible possession thereof. After forcible possession is taken over, the Court Receiver will have to be directed to hand over the possession of the entire building to the said Corporation for demolition with a direction to the said Corporation to demolish third to eighth floors.

Needless to add that the premises on the ground, first and second floors can be occupied only if an Occupation Certificate/Completion Certificate is granted by the said Corporation.

14 Hence, we dispose of the petition by passing the following order:

(I) We direct the Court Receiver already appointed under the order dated 8th June 2017 to forthwith take forcible possession of the premises on the ground floor as well as first floor which were earlier occupied, if the possession thereof is not already handed over to the Court Receiver in terms of the undertaking given by the respondent No.10. The Officer-in-charge of the local police station shall render all possible police help to the Court Receiver for taking forcible possession;

(II) The Court Receiver shall hand over possession of the entire building to the Designated Officer of the concern ward of the said Municipal Corporation within a period of 15 days from the date on which this order is communicated to the Court Receiver after taking forcible possession as aforesaid, if necessary;

(III) The Registrar (Judicial) shall communicate this Judgment and Order to the learned Civil Judge (J.D.), Bhiwandi who in turn will communicate this Judgment and Order to the Court Receiver already appointed (Mrs.S.S.Kulkarni, Assistant Superintendent);

(IV) Within a period of six weeks from the date on which possession of the building is handed over to the Designated

Officer, the demolition of third to eighth floors shall be completed; (V) After the demolition as aforesaid is completed, the Municipal Corporation shall hand over possession of ground plus two upper floors to the respondent No.10; (VI) We make it clear that the premises on the ground plus two upper floors shall not be occupied without obtaining Occupation Certificate / Completion Certificate from the Municipal Corporation; (VII) We direct the petitioner to deposit further amount of Rs.10,000/- in the Court of Civil Judge (J.D.), Bhiwandi within a period of two weeks from today. The Court Receiver shall be entitled to withdraw the said amount as well as the amount of Rs.10,000/- deposited earlier. On handing over possession of the building to the Designated Officer, the Court Receiver shall stand discharged;

(VIII) In the event, the Court Receiver has incurred more expenditure than the sum of Rs. 20,000/- she will be entitled to submit a report to this Court for seeking deposit of additional amount. The report shall be submitted through the learned Civil Judge (J.D.), Bhiwandi. As soon as the report is received, the same shall be listed before this Court;

(IX) For reporting compliance by the Court Receiver and the Municipal Corporation, the petitions shall be listed on 25th January 2019 under the caption of 'Directions';

(X) The contempt notice issued to the 10th respondent will be heard on 25th January 2019;

(XI) Writ petitions are disposed of on above terms with no

order as to costs. Civil Application does not survive and the same is disposed of.”

2. The matter is today before this Court to report compliance.

3. The learned Advocate for the petitioner states that the offending floors i.e. third to eight floors are not yet fully demolished by the Municipal Corporation. The learned Advocate appearing for the Corporation states that respondent No.10 has filed a Civil Suit in Bhiwandi Court bearing Regular Civil Suit No.757/2015 and according to him, ad-interim protection is granted to respondent No.10.

4. In view of the order dated 1st November 2018, the question of Civil Court granting any protection to respondent No.10 does not arise. In any event, respondent No.10 through his Advocate informs the Court that to the best of his recollection, he has not filed any Suit and has not obtained any protective orders. He submits that if Respondent No. 10 has filed any Suit, the same shall be forthwith withdrawn by him. The statement is accepted. He submits that he has already handed over possession of the offending floors to the Court Receiver pursuant to the orders of this Court dated 1st November, 2018. He states that the Corporation may proceed to demolish the same.

5. In view of the above, we pass the following order :-

(i) We direct the Court Receiver appointed by this Court vide order dated 8th June, 2017 to forthwith hand over possession of the

premises to the Corporation.

- (ii) The Corporation shall upon taking possession of the premises demolish the offending floors i.e. floors three to eight. However, if any person is found occupying the said floors, the Corporation shall dispossess them with the help of the Senior Inspector of the local police station and thereafter demolish floors three to eight within four weeks from today;
- (iii) The Contempt Notice stands discharged.

(B.P. COLABAWALLA, J.)

(S.J. KATHAWALLA, J.)