

P.C. :-

1. On 9th April, 2019, we passed the following order:-

“1. In both these petitions, Mr.Surel Shah, appearing for the petitioners, tenders undertakings. He say that the undertakings are tendered of all the petitioners, save and except two in each of these petitions.

2. Mr.Surel Shah says that before the next date the undertakings of the balance/remaining petitioners would be placed on record. An affidavit-cum-undertaking by petitioner No.1 in Civil Writ Petition No.3 of 2019 reads as under:-

“I, Inayat Abdul Majid Khan Age :52 years, Occ :Service, R/at Room No.A-15, 369, A/2A, Nana Peth, Pune - 411 002 the Petitioner No.1 above named, do hereby state on solemn affirmation:-

1)I states that the Petitioners as well as the Respondent No.4 to submit undertaking accordingly, hence this Undertaking cum affidavit.

2)I undertake that after execution of registered agreements as per law by the Respondent No.4 Developer with me and on provision of transit accommodation or payment of rent for temporary accommodation till the date of possession of permanent ownership tenements in the new redeveloped building, I will vacate the respective rooms in my possession in the suit property/chawl, within 10 days from the date of execution of the said Registered Agreement.

I further undertake that I will pay half or 50% of the amount of registration charges and stamp duty as per law for registering the above said agreement. The rest half or 50% will be paid by the Respondent No.4 Developer.

Whatever stated herein above is true and correct to the best of my knowledge and I believe the same to be true and correct.”

3. This is a typical undertaking and commonly executed by all the petitioners. We have taken these undertakings on record.

4. Mr.Prafulla Shah, appearing on behalf of respondent No.4 in both the petitions, says that the said respondent is agreeable to an order being passed in terms of these undertakings by this Court and disposing of both the petitions.

5. Mr.Prafulla Shah, on instructions, says that on the petitioners not only executing these undertakings before this Court and they being accepted as such, within ten (10) days from the date of each of these petitioners vacating the existing premises and taking possession of the alternate premises, the petitioners would be conferred all rights on par with the others, who are the co-operating occupants. In other words, a permanent alternate accommodation agreement would be executed with each of these petitioners by the developer within four (4) weeks of their taking possession of the transit accommodation.

6. We place these matters under the same caption, after taking the undertakings tendered today on record, for passing final orders and directions on 15-4-2019.”

2. Upon that order, the petitions have been placed before this court today. Though we had recorded detailed undertakings of both sides, today, the apprehension expressed by Mr.Patil learned senior advocate is that in the event the petitioners vacate their existing premises and handover vacant and peaceful possession to the developer, but he does not submit any plan for construction of the permanent alternate accommodation or does not execute any agreement in that behalf with the petitioners, then, the petitioners would be virtually on the street.

3. We do not find any substance in this apprehension for the simple reason that on the earlier occasion Mr.Shah appeared and after speaking to and obtaining instructions from the petitioners, tendered the undertakings. The undertaking tendered by petitioner no. 1 in Writ Petition No.3 of 2019 has been reproduced in our prior order. That being a typical and common undertaking executed by all the petitioners, the same were taken on record.

4. Mr.P.B.Shah appeared for respondent no.4 and stated that the undertakings may be accepted and the petitions may be disposed of, but in turn, the respondent no.4 undertakes to this court that within 10 days from the date of each of the petitioners vacating the premises and taking possession of the alternate premises, they would be conferred with rights on par with other occupants (co-operating occupants) and an agreement styled as permanent alternate accommodation agreement will be executed, the stamp duty and the registration charges also will be paid. However, this will be done within four weeks of taking possession of the transit accommodation by the petitioners.

5. The writ petitions could have been disposed of by these orders and in terms of this undertaking on that date itself. However, they could not be disposed of or rather were not disposed of for want of written undertaking by respondent no.4.

6. Today, Mr.Shah has tendered the written undertaking of the developer. That is a written undertaking to this court. It is accepted accordingly.

7. Additionally, we inquired from Mr.Vishwanath Patil appearing for respondent nos. 2 and 3 in both the petitions as to whether any plans for construction of the permanent alternate

accommodation building have been received. Presently he has no instructions. However, we direct the fourth respondent to submit such plans within a period of two weeks from today. On the submission of such plans, the Municipal Corporation shall take the necessary steps strictly in accordance with law, but within a period of four weeks thereafter. It shall communicate its decision within the same period to respondent no.4-developer or his Architect.

8. The undertaking of respondent no.4 to this court is that he would handover possession of the respective premises styled as temporary alternate accommodation within a period of 12 days from today.

9. Mr.Shah tells today and contrary to this undertaking that the temporary or alternate or transit accommodation is ready and the petitioners can occupy it within next eight days. Thereafter, the petitioners should handover vacant possession of their existing premises.

10. Mr.Patil, on instructions, says that the possession of the existing premises would be handed over, as undertaken earlier, but within 10 days from today. Apart from this statement of Mr.Patil, in order to expedite the whole process and not to keep

these petitions unnecessarily pending on the file, we direct that within 10 days of this order, each of the petitioners, who have either submitted undertaking to this court or not, shall shift in the transit accommodation provided by respondent no.4. As already directed above, this transit accommodation is available, according to respondent no.4 and it would be ready for use and occupation within eight days. That is how we are giving 10 days' time to the petitioners to shift therein. After the shifting therein, within 10 days thereafter, the petitioner shall handover the possession of the existing premises by removing all the articles and belongings therefrom. It is only after the possession of the existing premises is handed over and they are rendered in totally vacant state that the petitioners would be entitled to avail of the benefits and thereafter, within a period of 10 days, the respondent no.4 shall execute the permanent alternate accommodation agreement.

11. This agreement has to be executed irrespective of whether the plans submitted or to be submitted are sanctioned/approved or otherwise. In terms of this agreement, the respondent no.4 shall ensure that the permanent alternate accommodation is provided to each of the petitioners within the time frame stipulated in the agreement, else, all consequences in law shall

follow. The respondent no.4 must also, in terms of the affidavit-cum-undertaking taken on record today, pay 50% of the registration and the stamp duty charges.

12. The petitioners are given this additional time to comply with the notices issued by the Municipal Corporation. In the event the Municipal Corporation is of the opinion that these are but delaying tactics on the part of the petitioners, after the expiry of the period stipulated in our earlier order as also the order passed today and in the event the petitioners have not shifted themselves from the existing premises, the Municipal Corporation can proceed to have them demolished. The demolition then would be entirely at the cost and consequences of the petitioners.

13. All the undertakings tendered today are taken on record. Mr.Patil says, on instructions, that one of the petitioners has a problem and he cannot attend this court's Registry for execution of the undertaking. We do not think that any further undertaking should be placed on record by parties for we are of the opinion that our order sets out the programme for implementation of the development scheme.

14. With the aforesaid directions, both the writ petitions are disposed of. There would be no order as to costs. In the light of the disposal of the writ petitions, the civil application does not survive and stands disposed of as such.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)