

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

WRIT PETITION NO.11484 OF 2018

Mr. Pravin Y. Shinde & Others .. Petitioners.

v/s.

The Commissioner
Kalyan Dombivali Municipal Corporation
& Others .. Respondents.

WITH
CIVIL APPLICATION NO.209 OF 2017
IN
WRIT PETITION NO.11484 OF 2018

M/s. Sevabhavi Enterprises & Others .. Applicants.

v/s.

Pravin Y. Shinde & Others .. Respondents.

Mr. Akshay R. Kapadia, for the Petitioners.

Mr. A. S. Rao, for Respondent Nos. 1 to 3.

Mr. Ram S. Apte, Sr. Advocate with Mr. A. A. Garge with Mr. Kashyap Bhalerao,
for Respondent Nos. 4 to 7.

CORAM: G.S.KULKARNI &
R. N. LADDHA JJ.
DATED : 12th APRIL, 2023.

PC:-

Heard learned Counsel for the parties.

2 This Petition was filed on 14th September, 2016 which is
pending admission.

3 Initially, when Petition came to be filed, Petitioners prayed for
following reliefs:-

“(A) That this Hon’ble Court under its Civil Appellate Writ Jurisdiction under Article 226 & 227 of the Constitution of India, 1950 be pleased to call for record and proceedings of the order dated 20.07.2016 and, thus after going through the legality, validity and correctness of the impugned order dated 20.07.2016 passed by the Respondent No.1 be pleased to quash and set aside the same;

(B) That this Hon'ble Court be pleased to call for the record and proceedings of the matter from the Kalyan Dombivali Municipal Corporation and after considering the legality, validity and correctness of the impugned order No. O. No.KDMC/TP/53, dated 05.04.2016 passed with the consent of the Hon'ble Commissioner, Kalyan Dombivali Municipal Corporation, by the First Assistant Director, Town Planning, Kalyan-Dombivali Municipal Corporation, Kalyan be pleased to quash and set aside the same;

(C) That this Hon'ble Court be pleased to declare the development permission vide I.O.D. dated 08.04.2008 bearing No. KDMC/NRB/BP/KV/25-13, the Commencement Certificate bearing outward No. KDMC/NRB/BP/KV/2012-13/330, dated 25.02.2013 and revised Building Permission bearing No. KDMC/NRB/BP/KV/2012-13/330/24, dated 17.04.2014 granted to the Respondent Nos. 4 to 7 developers/ builders as illegal, contrary to the D. C. Rules, applicable laws and non-compliance of conditions laid down by the Kalyan Dombivali Municipal Corporation in the I.O.D. and, therefore, same may be quashed and set aside;

(D) That, this Hon'ble Court be pleased to direct the Respondent No.1 Corporation and its officers to take an appropriate action for non-compliance of conditions imposed on the developers Respondent Nos. 4 to 7 herein such as cancellation of plans, issuance of stop work notices and ultimately direct the Respondent/Developer/ Builders to stop the constructions and construct the building only as per proper and sanctioned plan, which is an adherence to the law;

(E) That, this Hon'ble Court be pleased to initiate the appropriate action against the officers of Respondent No.1 Corporation including Respondent Nos. 2 to 3 for violation of law and sanctioning plans of Respondent/Developers/ Builders, which are deliberately made to suit the convenience of Respondent Nos. 4 to 7 in contravention of all applicable laws, rules and regulations and which jeopardize the rights of the Petitioners/ tenants;

(F) That, during pendency of this writ petition, the impugned order dated 20.07.2016, 05.04.2016 passed by the Respondent No.1 may kindly be stayed;

(G) That Respondent Nos. 1 to 3 may be directed not to grant part Occupation Certificate to Respondent Developer during the pendency of this Petition;

(H) That, during the pendency of this writ petition, the development work at site/ premises may be stopped;

(I) Interim/ Ad-interim relief in terms of prayer clauses (F), (G), and (H) may be granted;

(J) That such other orders as justice and convenience may demand from time to time may be passed in favour of the Petitioners by this Hon'ble Court."

4 It appears to be not in dispute that there were 137 tenants in respect of original premises. Out of which, 14 tenants have surrendered their tenancy rights and have given No Objection for the building to be constructed by Respondent Nos.4 to 7. The plans were accordingly sanctioned in that regard and the rehab building has already been constructed and Occupancy Certificates in parts are already granted.

5 Mr. Apte, learned Sr. Counsel, appearing for Respondent Nos. 4 to 7, had made a statement that 90 tenants were required to be rehabed. Out of which, 32 tenants have already taken possession of their respective tenements.

6 The challenge in this Petition is only by 4 tenants. The others have not filed any proceedings and they are yet to take possession of their respective tenements. It also appears to be not in dispute that Respondent Nos. 4 to 7 have already filed suits with regard to the agreement entered

into between the tenants, praying for specific performance of the said agreement and the suits have decreed. Under the decree, tenants are required to make certain payments to Respondent Nos. 5 to 7 before they take possession of their respective tenements.

7 It appears that the grievance of the Petitioner is that amount which is being demanded by Respondent Nos. 5 to 7, is not a reasonable amount and in short, the contention of the Petitioners is that if the said decree has been passed by the Civil Court, the same is not binding on the Petitioners.

8 Be that as it may, Petition came to be amended and now making extremely wide prayers as can be seen. The said amended prayers are also required to be noted which reads thus:-

“(C-1) That this Hon’ble Court be pleased to call the papers and proceedings leading to the grant of the full Occupation Certificate and after going through the legality, validity and correctness of the same, be pleased to quash the same and set aside;

(G-1) That the Respondent Nos. 1 to 3 Corporation may be directed not to grant final occupation certificate to Respondent developer builder so far as building A & B is concerned during the pendency of this petition;

(G-2) That the part occupation certificate dated 03/10/2016 for building A issued by corporation for reasons stated in petition may be quashed and set aside declaring same is illegal and void;

(G-3) That the Respondent developer builder Nos.4 to 7 may be injuncted from parting with the possession from any part of building during the pendency of petition and also should not create third party interest;

(G-4) That the various suits filed by Respondent

developer for specific performance for execution of Agreement against the petitioner tenants and other tenants before the Civil Court Kalyan may be stayed during pendency of this petition;

(H-1) That pending the hearing and final disposal of this Petition, this Hon'ble Court be pleased to direct the Developers to not to act upon the Occupation Certificate received by the Respondent Corporation;

(H-2) That pending the hearing and final disposal of the Petition, this Hon'ble Court be pleased to direct the Developers to continue with their obligation under the MoU to pay the rent towards alternate accommodation of the member of the Petitioner Society and not discontinue with the same as stated in their letter at Annexure W."

9 It appears to be an admitted position that Respondent Nos. 5 to 7 have entered into a legal and valid agreements with tenants and also with the Petitioners. The Petitioners have never filed any proceedings to contend that agreements are illegal, null and void. On the contrary, Respondent Nos. 5 to 7 have filed suits for specific performance of the said agreement against the Petitioners which have been decreed. It is thus clear that in pursuing the present proceedings, the intention of the Petitioners who are merely four in number, is not *bona fide*. It appears that Petitioners have filed this Petition for collateral purposes and/or to wriggle out from the obligation to make payments when the decree in question as obtained by Respondent Nos. 5 to 7 against them or as some *quid pro quo*.

10 We are accordingly, not inclined to entertain this Petition. We accordingly dismissing this Petition with costs quantified at Rs.50,000/- (Rupees Fifty thousand only), as in our opinion, the Writ Petition is an

abuse of the process of law. The Costs be deposited by the Petitioners with the Maharashtra Legal Aid Services Authority within two weeks from today, failing which, the amount shall be recovered from the Petitioners as arrears of land revenue.

11 At this stage, learned Counsel for the Petitioners submit that the amounts of costs be reduced. On instructions, learned Counsel for the Petitioners submits that his client is willing to deposit cost quantified at an amount of Rs.5,000/- (Rupees Five thousand only). We accordingly modify our above directions and permit the Petitioners to deposit an amount of Rs.5,000/- (Rupees Five thousand only) with the Maharashtra Legal Aid Services Authority within a period of two weeks from today.

12 The observations made by us in dismissing the present Petition are confined to the adjudication of the present Petition and shall not affect any pending proceedings between the parties.

13 In view of disposal of the Petition itself, nothing survives in the Interim Application and the same is also disposed of as infructuous.

(R. N. LADDHA J.)

(G. S. KULKARNI,J.)