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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10796 OF 2024

Prakash Laxman Prajapati and Ors. ...Petitioners
Versus
Kalyan Dombiwali Municipal Corporation and ...Respondents
Ors.

Dr Uday Warunjikar, *a/w Adv Kalpesh Joshi, Adv Nisha Shah, Adv Sarvesh Dixit, Adv Adesh Jadhav, Adv Narendra Demansh i/b Kalpesh Joshi Associates, for the Petitioners.*
Mr Yashodeep Deshmukh, *a/w Vaidehi Pradeep & Pradip Patil, for Respondents 1 and 2.*
Mr Chandrakant Jagtap, Ward Officer and Asstt. Commissioner for KDMC- Present.

CORAM M.S. Sonak & Kamal Khata, JJ.
DATED: 1st August 2024

PC:-

1. Not on board. Upon mentioning taken on board.
2. Heard learned counsel for the parties.
3. The challenge in this petition is to the demolition order dated 09 March 2021 and notices dated 13 July 2024 for the execution of such demolition orders.

4. Mr Warunjikar submitted that the demolition order was made against M/s Swastik Homes, which is, in fact, a proprietary concern of Mr Mayur Bhagat. However, the demolition notice described it as a partnership firm of 3 partners. In this Court's order dated 05 July 2024, the counsel who appeared for M/s Swastik Homes made a statement that Mr Devesh Bhagat and Mr Umesh Patil were not partners of M/s Swastik Homes. He, therefore, submitted that since no proper notice was issued to M/s Swastik Homes before the demolition order was made, such an order cannot be enforced against the petitioners who have purchased apartments from M/s Swastik Homes. He pointed out that M/s Swastik Homes has been impleaded as 3rd respondent in this petition.

5. Mr Warunjikar submitted that the petitioners had purchased the apartments through a registered sale deed from M/s Swastik Homes. He submitted that along with the registered sale deed, the builder had annexed a Commencement Certificate ("CC") dated 04 October 2021 issued by the Kalyan Dombiwali Municipal Corporation ("KDMC"). He submitted that the construction is not unauthorised or illegal.

6. Mr Yashodeep Deshmukh, learned counsel for the KDMC, states that the petitioners have suppressed material particulars from this Court and made deliberately false statements. He referred to categorical statements in paragraphs 10, 12, and 14 of this petition in which some of the petitioners, i.e. petitioners 6, 7, and 8, stated on oath that from 2022 onwards, they have not received any irregularity and unauthorised construction notice from KDMC regarding the building, which is now ordered to be demolished. He

submitted that these were false statements and produced the notices with these petitioner's endorsements of receipt.

7. Mr Deshmukh also submitted that the CC dated 04 October 2021 is a fabrication, and this has already been intimated to Mr Jayesh Mhatre, the complainant and the petitioner, in writing in Writ Petition No. 7943 of 2022. Mr Deshmukh submitted that Mr Jayesh Mhatre is a necessary party to this petition, and the petitioners have deliberately chosen not to implead him as a respondent.

8. Mr Deshmukh, on instructions, also submitted that KDMC has no records of issuing any permissions to M/s Swastik Homes, whatever its composition. He submitted that notice was issued to M/s Swastik Homes, and only after compliance with the principles of natural justice was the demolition order dated 09 March 2021 made.

9. The rival contentions now fall for our determination.

10. The record shows that Mr Jayesh Mhatre, the petitioner in Writ Petition No. 7943 of 2022, had complained to KDMC that the building in which the petitioners reside is wholly illegal and unauthorised construction put up by M/s Swastik Homes without any permission from any authorities, including KDMC. Based on such complaint, the KDMC issued notice to M/s Swastik Homes and finally issued a demolition order dated 09 March 2021. However, for a long time, this demolition order dated 09 March 2021 was not implemented by the KDMC.

11. Therefore, Mr Jayesh Mhatre instituted Writ Petition No. 7943 of 2022 before this Court seeking direction to KDMC to

enforce its demolition order dated 09 March 2021. The order dated 05 July 2024, by which this petition was disposed of, records the statement of learned counsel for the KDMC that the demolition was scheduled on 16 July 2024 and would be carried out with police protection. This statement was accepted, and the petition was disposed of by directing KDMC to file a compliance report.

12. At that stage, learned counsel for M/s Swastik Homes made a statement that Mr Devesh Bhagat and Mr Umesh Patil were not partners to M/s Swastik Homes. This statement was recorded in the order dated 05 July 2024 at his request. However, the counsel who appeared neither made any grievance about M/s Swastik Homes not being served with the show cause notice nor about the demolition order dated 09 March 2021 being infirm for any reason. The counsel for M/s Swastik Homes also did not even attempt to produce any permission based upon which such building was constructed.

13. The record shows that when the KDMC, along with the police force, went to implement its demolition order dated 09 March 2021, a large mob gathered at the site and physically prevented KDMC and police officials from executing the demolition order dated 09 March 2021. The Assistant Commissioner, KDMC, filed a detailed affidavit, explaining how residents of the unauthorised building took the law into their own hands, involved certain politicians and forcefully thwarted the demolition. Accordingly, this Court was constrained to make an order dated 26 July 2024 directing the Commissioner, KDMC, and the Commissioner of Police, District - Thane, to ensure that the rule of

law prevails and the lawful orders of the KDMC or this Court, are not frustrated by the rule of the mob.

14. At the hearing on 26 July 2024, five of the Writ Petitioners filed interventions. Their counsel solemnly stated that none of the five proposed interveners were part of the mob that had physically obstructed the demolition process. The intervention based on the vague pleadings was not entertained, since by order dated 5 July 2024, the petition had already been disposed of.

15. The petitioners challenged this Court's order dated 05 July 2024 before the Hon'ble Supreme Court by instituting Special Leave Petition (Civil) Diary No(s). 31523 of 2024 (SLP) by claiming to be aggrieved by that order. However, by order dated 19 July 2024, the Hon'ble Supreme Court dismissed this SLP as not pressed. After that, the present Writ Petition was instituted but without making Mr Jayesh Mhatre, the petitioner/ complainant in Writ Petition No. 7943 of 2022, as respondent. In the facts of the present case, Mr Jayesh Mhatre was a necessary party, and this is nothing but an attempt to obtain some orders behind his back even though the petitioners were fully aware that Mr Jayesh Mhatre was the complainant who was pursuing this matter of demolition of illegal construction in which the petitioners reside.

16. After the Hon'ble Supreme Court dismissed the SLP as not pressed against the order dated 05 July 2024, in this petition, the petitioners have sought interim relief to stay the execution and/or implementation of this Court's order dated 05 July 2024. This has been done without impleading Mr Jayesh Mhatre, who was the petitioner in the said petition, as respondent. We agree with Mr Deshmukh that this is clearly a case of non-joinder of the necessary

party. Besides, we are not sure whether the petitioners can seek such interim relief after the SLP against the order dated 05 July 2024 was dismissed as not pressed. But there are other weighty grounds to non suit the petitioners.

17. The petitioners in paragraphs 10, 12 and 14 have made statements on oath that petitioners 6, 7 and 8 have been staying in the apartments since 2023 but have not received any notice regarding any irregularity and unauthorised construction from the KDMC. However, Mr Deshmukh, learned counsel for the KDMC, has produced three notices dated 03 July 2023, addressed to the petitioners 6, 7 and 8, clearly informing them that the building in which they were staying is wholly illegal and unauthorised and they should demolish the same or vacate their apartments to pave the way for demolition. Even these notices categorically state that if this is not done within seven days, the KDMC will have no option to proceed with the demolition with the police force. These notices bear the endorsement of the petitioners 6, 7 and 8. Yet, false and misleading statements were made in this petition in order to obtain interim relief in a hurry. This is a case of deliberate false statements.

18. Mr Warunjikar argues that even if something can be said about petitioners 6, 7, and 8, such suppression or misstatements can affect only these three petitioners but not the remaining petitioners. We cannot accept this argument, particularly since the first petitioner verified it. In the verification, the first petitioner stated that the averments in the petition were true to his own knowledge. Based upon such false statements, all the petitioners pressed for interim relief.

19. Apart from suppression, the petitioners purport to rely upon the document dated 04 October 2021, i.e. CC, which finds no place in the KDMC record. Since, on the earlier occasion, the document was sought to be used, Mr Jayesh Mhatre had applied to the KDMC under the RTI enquiring about the document's status dated 04 October 2021. He was informed vide communication dated 10 November 2022 that no such document exists in the records of the KDMC. As if this is not sufficient, learned counsel for the KDMC, based on the instructions, submitted that no permissions were issued to M/s Swastik Homes, whatever be its composition for the construction of this building, which is now occupied by some of the petitioners.

20. Mr Warunjikar's only contention was that even if any person puts up some wholly illegal or unauthorised building, such a person is still entitled to insist on proper notice. In the absence of any proper notice, the municipal authorities cannot proceed with the demolition. In the present case, based on the records, we cannot say that no proper notice was issued to the builder to put up this wholly illegal and unauthorised construction. Based on the confusion about some persons either being or not being partners of the builder's firm or concern, it is by no means sufficient to fault the notice issued to M/s Swastik Homes and the opportunity granted to M/s Swastik Homes to produce on-record permissions if any backing the construction in question.

21. The petitioners are also not in a position to produce any permission, but their star argument is that they have registered a sale deed, and therefore, it is for the builder/ developer to explain how this whole building was put up. Besides, the record now shows

that the notices were issued to some of the petitioners on 03 July 2023, clearly informing them that the building in which they are staying is illegal and unauthorised and that they should demolish or at least vacate so that the KDMC can proceed with the demolition. From 2023 onwards, nothing was done by these petitioners to either comply with the directions in the notices or to satisfy the KDMC about the legality of the building, assuming that they had any material suggesting that the building was legal or authorised. In the above circumstances, Mr Warunjikar's contention about complying with the principles of natural justice cannot be accepted. There cannot be any unnatural expansion of the principles of natural justice.

22. Mr Deshmukh submitted that petitioners 2, 6 and 8, who had sought intervention in this Court's order dated 26 July 2024, were directly involved in physically preventing the KDMC officials from enforcing the demolition order. He submitted that a false statement was made on their behalf that they had not obstructed the demolition process. He also produced on record the FIR against these petitioners for the perusal of this Court.

23. In order that these petitioners are not prejudiced in the Criminal prosecution that may be launched against them, this Court refrains from making any observations on the statement made before this Court and recorded in our order dated 26 July 2024. This circumstance is completely excluded from consideration.

24. However, even after excluding the above circumstance, we are satisfied that no case is made to exercise our extraordinary and equitable jurisdiction to assist the present petitioners or protect the wholly illegal and unauthorised building. Our order dated 05 July

2024 had merely recorded the KDMC's statement that the demolition order made on 09 March 2021 would be enforced. No case is made to interfere with the demolition order dated 09 March 2021, particularly in the absence of any permission or sanction for putting up this building, which is now ordered to be demolished. The attempt to produce fabricated documents or to make misleading statements is also a valid consideration not to exercise discretion in favour of the petitioners.

25. We repeatedly asked Dr Warunjikar if the petitioners had any documents or permission to back the building's construction. However, apart from the sale deed and the fabricated CC, he could not produce any document or material. In such circumstances, simply insisting that the builder was not given proper notice when the builder does not himself say so is not sufficient. For all the above reasons, we dismiss this petition without any orders for costs.

26. At this stage, Mr Warunjikar submits that the petitioners may be granted some time to vacate the premises. Considering that the execution of the lawful orders was physically thwarted, and correct facts were suppressed, we do not think such indulgence can now be extended to the petitioners. The request is accordingly not entertained.

(Kamal Khata, J)

(M.S. Sonak, J)