

Wadhwa

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 11317 OF 2024
IN
WRIT PETITION NO. 15127 OF 2023

Sai Laxman Halve & Ors ...Applicants
In the matter between
Ujwala Yashodhan Patil ...Petitioner
Versus
Municipal Corporation for the City of Kalyan ...Respondents
Dombivali & Ors

Mr Swanand Ganoo, i/b Namdev Gore, for the Applicants.
Mr Hemant Ghadigaonkar, with Ms Ashwini Mhatre, for the
Petitioner in WP/15127/2023.
Mr AS Rao, for the Respondent-Corporation.

CORAM M.S. Sonak &
Kamal Khata, JJ.
DATED: 7th August 2024

PC:-

1. Heard learned counsel for the parties.
2. The time to carry out amendment is extended upto today.

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3. Considering the amendment, this is an Interim Application filed on behalf of 16 occupants of the building which is ordered to be demolished by Kalyan Dombivali Municipal Corporation (KDMC) by its order dated 6 April 2021.

4. By our order dated 15 July 2024 in Writ Petition No. 15127 of 2023, we had recorded the statement on behalf of the KDMC that the KDMC would implement its demolition order dated 6 April 2021 on or before 12 August 2024, if necessary, by obtaining police protection.

5. Therefore, the 18 Applicants had applied to this Court seeking recall of our order dated 15 July 2024. However, on 6 August 2024, the learned counsel for the Applicants, on instructions submitted that the demolitions may be deferred upto the end of September 2024 due to the monsoons. He submitted that all the 18 occupants were willing to give undertakings to this Court that they would vacate their premises by end of September 2024 to facilitate demolitions by KDMC.

6. On hearing the learned counsel for the parties, on 6 August 2024, we made the following order:-

“1. This application is filed by two applicants on their own behalf as well as on behalf of the 16 remaining occupants in the building which is ordered to be demolished by the Kalyan Dombivali Municipal

Corporation (“KDMC”) by its order dated 6th April 2021.

2. The learned counsel for the Applicants, on instructions, submitted that the demolitions may be deferred upto end of September 2024 due to the ongoing monsoons. He submitted that the Applicants are willing to give undertakings before this Court to vacate their premises by end of September 2024 to facilitate the demolitions by KDMC. On instructions, he submitted that Reg. Civil Suit No.373 of 2023 pending before the 6th Jt. Civil Judge, Senior Division, Kalyan concerning the demolition order dated 6th April 2021 would be withdrawn by the Plaintiff unconditionally, should this Court grant some protection upto the end of September 2024. The learned counsel for the Applicants also state that a fresh suit which is lodged before the same Court which is yet to be numbered will also not be prosecuted and would be withdrawn.

3. There are only two Applicants in this Interim Application. Accordingly, the learned counsel for the Applicants craves leave to implead remaining 16 occupants to this Interim Application. He states that all the 18 occupants will file necessary applications before this Court.

4. Leave is granted to amend the Interim Application. Amendment to be carried out forthwith. Re-verification is dispensed with.

5. The learned counsel for the Applicants states that undertakings of all the 18 occupants will be filed tomorrow in this Court. He says that the undertakings will state that Applicants/ occupants will vacate the premises latest by 1st October 2024 and in the meanwhile, not transfer, alienate, encumber or otherwise part with possession of the premises.

6. Accordingly, the demolitions which are scheduled for 7th August 2024 should be deferred till 8th August 2024.

7. List the matter on **7th August 2024 at 2.30 pm** to consider the undertakings.

8. The learned counsel for the Applicants requests recording the presence of the two Applicants before this Court. It is so recorded.”

7. Today, consistent with the statements made and recorded by our order dated 6 August 2024, the 18 occupants have filed affidavit-cum-undertaking before us. This common undertaking signed by the 18 Applicants.

8. The affidavit-cum-undertaking filed before us on 7 August 2024 reads as follows:-

“1. In pursuance of Order dated 06.08.2024, passed by this Hon’ble Court in the captioned Interim Application, the Applicants above-named file this Undertaking before this Hon’ble Court in the following terms:-

a. Applicants are residents/occupants of 18 flats situated in Building known as Sai Sadan Residency, situated on Plot No. 51, H. no. 1/6, Village Aayre, Taluka:- Kalyan, Dist.:- Thane (“said building”). A detailed list of Flats occupied by the Applicants in the said building, is annexed hereto as **Exhibit A**.

b. The Applicants (and their family members) hereby undertake to vacate their respective flats as mentioned at Exhibit A hereto, on 01 October 2024.

c. The Applicants (and their family members) further undertake that they shall on 01 October 2024 handover vacant and peaceful possession of their respective flats and the said building to such officer of Respondent no. 1-Corporation as may be nominated by the Respondent no. 1-Corporation.

d. The Applicants (and their family members) hereby undertake that they shall not obstruct the demolition of the said building or any portion thereof, by Respondent No. 1, its officers, staff, if such demolition is undertaken by Respondent No. 1, after 01 October 2024.

e. The Applicants (and their family members) hereby undertake that they shall not create any third-party rights in respect of the flats as mentioned in Exhibit A at any time. The Applicants shall not transfer and/or part with possession of the flats as mentioned in Exhibit A to any third party.

f. The Applicant No. 1 – Shri. Sai Laxman Halve Hereby undertakes to withdraw unconditionally Regular Civil Suit No. 373 of 2023 filed by him presently pending in 6th Jt. Civil Judge, Senior Division, Kalyan Court at Kalyan, once the Hon'ble High Court grant protection from demolition of the said building till before 30 September, 2024.

g. The Applicants (and their family members) hereby undertake to withdraw and not to prosecute the civil proceedings before 6th Jt. Civil Judge, Senior Division, Kalyan Court at Kalyan, which is filed but not numbered yet against Respondent No. 1.

2. The Applicants submit to Orders of this Hon'ble Court in terms of the Undertaking and further state that this Undertaking has been prepared as per our instructions and has been explained to us in Marathi/Hindi and we have understood the contents hereof.”

9. To the above undertakings, the list indicating the names and particulars of units held by the Applicants is annexed. Identification documents have also been annexed.

10. The affidavit-cum-undertaking is taken on record and marked as “X” for identification with today's date. The above undertaking is accepted as undertaking to this Court and the Applicants will have to abide by such undertaking, now that the demolitions are directed to be deferred upto 15 October 2024.

11. The undertakings about withdrawal of Regular Civil Suit No. 373 of 2023 and the non-prosecution of the Suit referred to in clause

1(g) of the undertaking is also accepted. The Applicants must act consistently with their undertakings. In any event, the KDMC must place the undertakings as well as an authenticated copy of this order before the learned 6th Joint Civil Judge, Senior Division at Kalyan so that the necessary orders can be passed to dispose of those Suits.

12. Based upon the above undertaking, we now direct the KDMC to defer the demolitions in pursuance of the demolition order dated 6 April 2021 upto 15 October 2024. This means that upto 1 October 2024 there should be no demolitions. But the demolitions should be carried out between 2 October and 15 October 2024. The KDMC must file a compliance report in this Court along with photographs on or before 25 October 2024.

13. Mr Rao the learned counsel for KDMC has pointed out that apart from the 18 units occupied by the 18 Applicants, there are 4 additional units which are closed. He submitted that leave should be granted to the KDMC to seal these rooms which are in fact locked so that there are no further complications or so that no parties enter into these rooms and resist eviction and demolition. Mr Rao has handed in a chart and units at Serial Nos. 16, 21, 22 and 23 are the closed units. Accordingly, leave is granted to seal these units.

14. The KDMC should depute its Ward Officer to visit the unauthorised building on 1 October 2024 at 10:30 am. The learned counsel for the Applicants states that the Applicants will handover the vacant possession of the units in the building to this Ward

Officer on the said date without any resistance. This statement is again accepted as undertaking on behalf of all the Applicants.

15. This Interim Application is disposed of in the above terms. There shall be no order for costs. All concerned to act on an authenticated copy of this order.

16. List the matter on 11 November 2024 to consider compliance report.

(Kamal Khata, J)

(M.S. Sonak, J)