

Campa Cola Residents Asso. & Another

v.

State of Maharashtra & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE V. GOPALA GOWDA

Special Leave to Petition (Civil) No. 31536 Of 2013 | 13-11-2013

1. By detailed order dated 27.2.2013, this Court dismissed Civil Appeal Nos. 7934-38 of 2012 Esha Ekta Apartments Co-operative Housing Society Limited and others v. Municipal Corporation of Mumbai and others filed against the order of the learned Single Judge of the Bombay High Court, who declined to interfere with the discretion exercised by the trial Court not to restrain the Municipal Corporation of Greater Mumbai from demolishing unauthorized and illegal constructions made on the buildings in Campa Cola compound. Simultaneously, Transferred Case (Civil) No. 55 of 2012 Campa Cola Residents Association and another v. State of Maharashtra filed for regularization of the unauthorized and illegal construction was also dismissed.

2. After about two months, Rajesh S.Parekh and others filed Writ Petition No.1076/2013 before the High Court for issue of a direction to the Corporation not to demolish the unauthorized and illegal construction on the ground that the action taken by the Corporation was ultra vires the provision contained in Section 53(3) of the Maharashtra Regional and Town Planning Act, 1966 (for short, 'the 1966 Act'). The same was dismissed by the High Court vide order dated 29.4.2013. SLP(C)No.17002/2013 filed against that order was dismissed by this Court on 2.5.2013. However, five months time was granted to the petitioners and other occupants of illegal portions of the buildings to vacate the same. This is evident from the following portions of order dated 2.5.2013:

"The special leave petition is accordingly dismissed. However, keeping in view the fact that the occupants of the illegally constructed flats may not have got sufficient time to vacate the same, we allow five months time to the petitioners and other occupiers of illegal portions of the buildings to vacate the same. This would be subject to the following conditions:

(i) Within four weeks from today they shall file affidavits in this Court and give unequivocal undertaking that at the end of five months period all of them will voluntarily vacate the disputed portions of the buildings and will not cause any hindrance in the action which may be taken by the Corporation in the 3 light of the observations made by this Court in judgment dated 27.2.2013 in Civil Appeal No.7934/2012 and connected matters.

(ii) During the period of five months, the petitioners and other occupiers shall not induct any other person in the disputed premises. They shall also not file litigation of any kind in the Bombay High Court or the Courts subordinate to the High Court for frustrating the action already taken by the Corporation or which may be taken hereinafter."

3. Just before expiry of five months period, Rajesh S. Parekh and three others filed IA No.2 of 2013 in SLP(C)No.17002/2013 for issue of a direction to the Corporation to carry out demolition work as per order dated 4.6.2010 of the State Government. That application was withdrawn on 11.9.2013 with liberty to approach the concerned authorities. Thereafter, application dated 16.9.2013 was submitted to the Executive Engineer of the Corporation for approval of the amended plans under Section 53(3) of the 1966 Act read with Section 342 of the Mumbai Municipal Corporation Act, 1888 (for short, 'the 1888 Act'). The Corporation held that in view of the orders passed by this Court, the prayer made in the application cannot be entertained. Writ Petition No.2465/2013 filed against the decision of the Corporation was dismissed by the Division Bench of the High Court by observing that the application filed by the petitioners was nothing but an abuse of the process of the Court.

4. Campa Cola Residents Association and another again unsuccessfully sought intervention of the Bombay High Court for protecting the unauthorized and illegal constructions and then approached this Court by means of SLP(C)No.31536 of 2013. The same was dismissed by this Court on 01.10.2013.

5. While dismissing the last mentioned special leave petition, the Court took cognizance of the statement made by Shri Mukul Rohatgi, learned senior counsel appearing for the petitioners that 75% members of the house building societies have vacated the illegally constructed portions of the buildings and extended the time specified in the earlier orders upto 11.11.2013.

6. In the early morning today, we read reports in the newspaper 'The Hindu' about the proposed demolition of the unauthorized and illegal constructions in the Campa Cola compounds and found that majority of the members of the house building societies have so far not vacated the disputed constructions. Some of them could not vacate the disputed constructions on account of non-availability of alternative place. By cognizance of the report, we requested Shri F.S.Nariman, learned senior counsel, who had appeared on behalf of the petitioners in SLP(C)No.17002 of 2013 and Shri Pallav Shishodia, learned senior counsel, who had appeared in most of the cases on behalf of the Corporation and indicated that we would like to stay the demolition and extend the time specified in the orders passed by the Court till 31.05.2014 so as to enable the residents to find alternative accommodation. Accordingly, an oral order was passed in the pre-lunch session that the Corporation shall not carry out demolition.

7. At our request, Shri F.S.Nariman and Shri Mukul Rohatgi, learned senior counsel, who appeared for the petitioners in 5 SLP(C)No.31536 of 2013 and Shri Goolam E.Vahanvati, learned Attorney General and Shri Pallav Shishodia, learned senior counsel appeared in the post-lunch session.

8. Learned Attorney General made some suggestions for finding a permanent solution to the problem faced by the residents of the co-operative housing societies. He gave out that a specific proposal would be submitted to the Court.

9. List the case on 19.11.2013.

10. To be taken up at 3.00 P.M.

11. Till further orders, the Corporation shall not carry out demolition in furtherance of the action initiated by notices issued under Section 351 of the Mumbai Municipal Corporation Act, 1888.

12. While adjourning the case, we deem it necessary to record our deep appreciation for the assistance provided by the learned Attorney General, Shri F.S. Nariman, Shri Pallav Shishodia and Shri Mukul Rohatgi, learned senior counsel.