

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 C. NAGAPPAN

Special Leave to Petition (Civil) No. 31536 Of 2013 | 19-11-2013

1. By detailed judgment 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 in 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. While dismissing the appeals and the transferred case, this Court had taken cognizance of the fact that construction had been made in violation of the sanctioned plan and despite the stop work notice issued by the Corporation and that the members of the Housing Societies had purchased the flats knowing fully well that the revised plans had not been sanctioned and/or occupancy certificates had not been issued. In paragraph 14 of the judgment, the Court referred to some of the clauses of an agreement signed between the builder and two purchasers which clearly revealed that the revised building plans were yet to be sanctioned by the Corporation. The Court also noted that the application filed for regularization of the unauthorized construction had been rejected by the competent authority of the Corporation vide order dated 7.7.2003 and the appeal filed against that order under Section 47 of the Maharashtra Town Planning Act, 1966 was dismissed by the Chief Minister by assigning detailed reasons including the one that the plot is situated in CRZ area.

3. 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 rejecting various contentions raised on behalf of the SLP petitioners. 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 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."

4. 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.

5. 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.

6. While doing so, 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.

7. When the Corporation started taking action in furtherance of the observations contained in judgment dated 27.2.2013, a large number of persons who are residing in unauthorized construction resisted the same.

8. After reading the report appearing in the newspaper 'The Hindu', which gave an impression that majority of the occupants had not vacated the flats and the statement made before the Court on 1.10.2013 was factually incorrect, the Court suo motu took up the matter on purely humanitarian ground and felt that time given by the Court deserves to be extended till 31.5.2014 so as to enable the residents to find alternative accommodation.

9. The learned Attorney General, who appeared before the Court on 13.11.2013 made some suggestions for finding a permanent solution to the problem of the residents of the housing societies and gave out that a specific proposal would be submitted to the Court.<sup>6</sup>

10. After considering the statement of the learned Attorney General, the Court adjourned the case for today and directed the Corporation not to carry out demolition in furtherance of the action initiated by notices issued under Section 351 of the Mumbai Municipal Corporation Act, 1888.

11. Today, the learned Attorney General gave out that after examining the matter, he is not in a position to give any specific proposal.

12. Having considered the entirety of the matter, we deem it proper to extend the time fixed in the earlier orders up to 31.5.2014. This order has been passed on purely humanitarian considerations and will not, in any manner, dilute the judgment and orders passed by the Court earlier and the occupants of the flats will have to vacate the premises in their occupation on or before 31.5.2014.

13. The benefit of the aforesaid direction would be available subject to the filing undertakings by all the occupants before this Court within a period of six weeks from today.

14. It is made clear that if all the occupants fail to file the required undertakings within the time specified, then the Municipal Corporation shall be entitled to take action in accordance with judgment dated 27.2.2013.