

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.521 OF 2000

Mrs. Kalpana Suresh Haram
of Mumbai, Indian Inhabitant,
permanently residing at Ground Floor,
Kapil Ashram Plot No.23A, 21st Road,
Khar (West), Mumbai-400 052. And
now temporarily residing at 2nd Floor
of G.J. Advani Law College R.D.
National College Compound,
Linking Road, Bandra, Mumbai-400 050 .. Petitioner

V/s

1. The Municipal Corporation of Greater
Mumbai, having its office at
Mahapalika Marg, Mumbai-400 001
2. Deputy Municipal Commissioner
Mumbai Municipal Corporation of
Greater Mumbai, H(W) Ward,
Bandra, Mumbai-50
3. The Ward Officer
Municipal Corporation of Greater
Mumbai, H(W) Ward, Bandra,
Mumbai-400 050
4. Deputy City Engineer
Building Proposal, H(W) Ward,
Bandra, Mumbai-400 050
5. Hydraulic Engineer
H(W) Ward, Municipal Corporation of
Greater Mumbai, Bandra,

Mumbai-400 050

6. Mr. A.M. Jalgaonkar
of Mumbai, Indian Inhabitant,
residing at 1st Floor, Kapil Ashram
Plot No.23A, 21st Road, Khar (West)
Mumbai-400 052.

.. Respondents

Mrs. Bhavana Ankalesaria i/b B.H. Vyas & Bhavana Shah for
Petitioner.

Mr. Vinod Mahadik for Respondent Nos. 1 to 5-BMC.

**CORAM : A.S. OKA &
G.S. PATEL, JJ.**

DATE : NOVEMBER 27, 2015.

ORAL JUDGMENT : (Per A.S. OKA, J.)

. Heard the learned Counsel appearing for the
petitioner and the learned Counsel appearing for the respondent
nos.1 to 5. This petition concerns the building known as “Kapil
Ashram”, on Plot No.23A, 21st Road, Khar (West), Mumbai-400
052. The petitioner is claiming to be a tenant of the premises on
the ground floor of the said building. The grievance made in
this petition under Article 226 of the Constitution of India is that

as 6th and 7th Respondent have not obtained occupation certificate in respect of the said building, regular waster supply has not been released. The first prayer in this petition is for directing the 6th and 7th respondent to complete all the formalities required for obtaining occupation certificate in respect of the said building, failing which 1st to 5th respondents be directed to take necessary action as per the provisions of Mumbai Municipal Corporation Act, 1888 (for short 'The said Act'). The second prayer is for directing the 1st to 5th respondents to grant a separate water connection to the petitioner's premises. The third substantive prayer is for issuing a writ in the nature of mandamus to issue notice to the 1st to 5th respondents calling upon them to carry out the repairs.

2 The learned Counsel appearing for the petitioner stated that due to the poor condition of the building, the petitioner is no longer residing in the said building. She invited our attention to the Reports of the Officers of Mumbai Municipal Corporation dated 17 May 2001 and 18 November

2003, annexed to the affidavit in reply of the Municipal Corporation. She pointed out that both the reports record that it is necessary to carry out the urgent repairs to the ground floor premises of the said building. Hence, her submission is that it is necessary to issue directions to 6th and 7th respondents to carry out the repairs. She accepts that the petitioner has filed a suit against 6th and 7th respondent in the Small Causes Court, Mumbai. We have heard the learned Counsel appearing for 1st to 5th respondents.

3 As of today, the admitted position is that the petitioner is no longer occupying the premises on the ground floor of the said building. The ground floor of the said building requires urgent repairs. Therefore, the first two prayers need not to be considered at this stage.

4 As far as the prayer regarding a direction to initiate action under the said Act is concerned, appropriate officer of Mumbai Municipal Corporation, will have to ascertain the

structural status of the building and thereafter, initiate action in accordance with the provision of the said Act and in particular Section 354 thereof. If the petitioner is a tenant in respect of the premises on the ground floor, appropriate remedies are available to the petitioner under the provisions of the Maharashtra Rent Control Act, 1999.

5 Hence, we dispose of the petition by passing the following order.

: O R D E R :

- (i) We direct appropriate Officer of the Mumbai Municipal Corporation to visit the building subject matter of this petition;
- (ii) After ascertaining the structural status of the building, the concerned officer shall decide whether an action needs to be initiated in accordance with Section 354 of the Mumbai Municipal Corporation Act, 1888;
- (iii) Appropriate decision shall be taken by the Mumbai Municipal Corporation within a period of four months from today;

- (iv) The decision taken by the Mumbai Municipal Corporation shall be communicated to the petitioner;
- (v) We make it clear that all the remedies of the petitioner under the Maharashtra Rent Control Act, 1999 are expressly kept open;
- (vi) We make it clear that we have made no adjudication on the issue of the rights claimed by the petitioner and all the contentions of the petitioner and the 6th and 7th respondents in that behalf are expressly kept open.
- (vii) Rule is disposed of in above terms, with no order as to costs.

(G.S. PATEL, J.)

(A.S. OKA, J.)