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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.59 OF 2015

United Co-operative Housing Society Ltd. ..Petitioner.

V/s.

Municipal Corporation of Greater Mumbai and Ors. ..Respondents.

Mr.A.A.Kumbhakoni, Senior Advocate i/b. Vyas & Bhalwal for the petitioner.

Mrs.Shobha Ajitkumar for respondent Nos.1 and 2.

Mr.Anil Shastri, AGP for respondent Nos.3 and 4.

Mr.M.S.Ahmed for proposed intervenors.

**CORAM : A.S.OKA AND
V.L.ACHLIYA, JJ.**

DATED : 19TH OCTOBER, 2015

P.C. :-

1. Heard the learned senior counsel appearing for the petitioner, the learned counsel appearing for the first and second respondents and the learned AGP appearing for the third and fourth respondents. Today, Shri M.S.Ahmed appears and submits that Mr. Gurubax Singh, claiming to be the Secretary of the petitioner society has no right to file the present petition. However, the parties to whom the learned counsel wants to appear have not filed any application before this Court.

2. The first substantive challenge in this petition is to the action of the Municipal Corporation under section 354 of Mumbai

Municipal Corporation Act, 1888 (for short 'the Act of 1888'). The second grievance made in the petition is that though an application is made for grant of No Objection Certificate (NOC) for re-development of the property to the District Collector on 21st November, 2014, the same has not been decided. The third prayer is a prayer which is consequential to the first prayer for challenging the action under section 354 of the said Act of 1888. The fourth prayer virtually seeks a writ of mandamus directing the fourth respondent State of Maharashtra to legislate. Obviously such a prayer cannot be granted in a petition under Article 226 of the Constitution of India.

3. The learned senior counsel appearing for the petitioner submitted that the letter at Exhibit-C addressed by the Mumbai Municipal Corporation to the Additional Collector (ENC) shows that the IIT has classified the building in question as falling in category C2(A). He submits that as the building has not been the classified under C-1 category, the same does not require immediate demolition. His second contention is that from the stand taken in the affidavit of Shri S.L.Patil, the Deputy Secretary of the Revenue Department, Mantralaya, Mumbai it appears that the NOC has not been granted because the petitioner has not paid certain dues. He submits that the rejoinder filed by the petitioner shows that the dues have been paid. The learned AGP submits that the petitioner

society has committed breaches of various terms and conditions and, therefore, the petitioner society is not entitled to NOC. However, on instructions, he states that the application for grant of NOC has not been decided by the Collector.

4. As far as the challenge to the action under section 354 of the said Act of 1888 is concerned, the petition itself proceeds on the premise that the building is in a dilapidated and dangerous condition which cannot be repaired. In the order dated 9th September, 2014 we have quoted the averments made by the petitioner in paragraph 37 of this petition. Paragraph 37 reads thus:-

“37. The petitioners state that the repairs are not feasible and the building is required to be pulled down and to be reconstructed / redeveloped. The petitioners say that the building No.23 of GTB Nagar have outlived its life, though non ceased building and the building remains to be in a state of Disrepair and may collapse in rainy seasons, and may consume human life's of the occupants and will send a wrong signal in the city of Mumbai. The petitioners state that it is high time that the respondent No.4 steps in, and take appropriate measures and set up a mechanism in place and consider bringing out an appropriate policy to salvage the situation and

address the grievances of the petitioners who are subjected to criminal prosecution and all concerned and to prevent loss of human lives of the occupants...."

(underline supplied)

5. In view of the averments, it is not open for the petitioner now to take a stand that the building is not dangerous and, therefore, it is not required to be pulled down. On the contrary, the stand taken in the petition is that the condition of the building is such that it may collapse in the rainy season and may consume human life. In view of this stand taken on oath, the challenge at the instance of the the petitioner to the action under section 354 of the said Act of 1988 cannot be entertained. Nevertheless, a direction will have to be issued to the Collector to decide the application for NOC within a time bound schedule.

6. We, however, make it clear that the issue raised today across the bar that the person claiming to be the Secretary of the petitioner has no right to file this petition on behalf of the petitioner -society is not dealt with by this Court and all contentions of the parties in that behalf are kept open.

7. Hence, we pass the following order :-

- (i) Prayer clauses (a), (b) and (d) are rejected;
- (ii) We direct the District Collector to decide the application dated 21st October, 2014 (Exhibit 'O' to the petition) as expeditiously as possible and in any event within a period of one month from today. The decision taken on the said application shall be communicated to the petitioner within a period of six weeks from today;
- (iii) All contentions of the parties are kept open;
- (iv) All parties to act on an authenticated copy of this order.

(V.L.ACHLIYA, J.)

(A.S.OKA. J.)