

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

WRIT PETITION NO. 774 OF 2008

Bombay Hospital Trust and ors. .. Petitioners

vs.

Brihan Mumbai Municipal Corporation and ors .. Respondents

Ms Amanda Rebello i/b Bharucha & Partners for the Petitioners.
Ms K.H. Mstakar for BMC-Respondent No.1.

CORAM : M. S. SONAK, J.
DATE : 20 JANUARY 2016.

P.C. :-

1] Ms Amanda Rebello, learned counsel for the Petitioners, applies for an adjournment in this matter. The matter relates to the year 2008. Besides, the issue involved in this petition is almost entirely covered by the decision of the Division Bench of this Court in Appeal No. 801 of 2004 in Writ Petition No. 2120 of 2004 made on 21 October 2015. The connected matters involving the same issue are today disposed of. Therefore, request for adjournment is deined.

2] In fact, when this matter was come up on 11 July 2014, the learned counsel appearing for the Petitioners had made a statement that the issue involved in the present petition is being considered by the Division Bench of this Court in Appeal No. 801 of 2004 and on the said ground, adjournment was granted. It was made clear that in

case there is any decision in the said appeal, the parties are at liberty to mention the matter.

3] As noted earlier, by order dated 21 October 2015, Appeal No. 801 of 2004 has now been disposed of, at least in relation to the issues raised in this petition. This petition was premised upon ruling of the learned Single Judge of this Court made in Writ Petition No. 2120 of 2004 (MCGM and Ors. Vs. Dalamal Tower Premises Co-operative Society Ltd. & anr.). The said decision was, however, appealed before the Division Bench. In appeal, Hon'ble Justice Mr. D.K. Deshmukh has agreed with the view taken by the learned Single Judge, but Hon'ble Justice Mr. R.G. Ketkar, disagreed and recorded a dissent. The matter was thereafter referred to the Hon'ble Justice Dr. D.Y. Chandrachud (as he then was), who has agreed with the view taken by the Hon'ble Mr. Justice R.G. Ketkar. The Division Bench of this Court on 21 October 2015 in Appeal No. 801 of 2004 in Writ Petition No. 2120 of 2004, in the aforesaid context, has made the following order.

1. Since there was a difference of opinion expressed by D.K.Deshmukh, J. (as he then was) and brother R.G. Ketkar, J., the point which was decided by both the learned Judges was referred to the third learned Judge viz. Dr. D.Y. Chandrachud, J. Thereafter Dr. D.Y. Chandrachud, J. gave an opinion confirming the view taken by R.J. Ketkar, J. The order of reference now has

been passed and the view expressed by Dr. D.Y. Chandrachud, J. and R.G. Ketkar, J. is a majority view. The Reference is therefore answered accordingly and disposed of.

2. It appears that R.G. Ketkar, J. had answered all the issues which were raised and argued. However, D.K. Deshmukh, J. (as he then was) had answered only one issue which was referred to the third learned Judge. Since the said issue has now been decided, parties will have to be heard on remaining issues by the Regular Division Bench.

3. At this stage, Mr. Sathe, the learned Senior Counsel appearing on behalf of the Respondents invited our attention to Section 98 of the Civil Procedure Code. He pointed out that since the Reference has been decided, appeal will have to be dismissed on other points. This issue shall also be decided by the Regular Division Bench.

4. Office to place this matter before the Regular Division Bench in which R.G. Ketkar J. is not a party.

4] In view of the aforesaid, this petition is dismissed. The interim orders, if any, are vacated.

5] The Respondent-Corporation is permitted to withdraw the amounts alongwith interest accrued thereon, if any, that may have been deposited by the Petitioner, at the stage of obtaining interim reliefs.

6] There shall, however, be no order as to costs.

7] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)