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

WRIT PETITION (L) NO.1824 OF 2016

Deepak Bajaj
and another

...Petitioners

Vs.

Municipal Corporation of
Greater Mumbai (M.C.G.M.)
and others

...Respondents

....

Mr. P.J.Gada i/b M/s. Dhanuka and Partners for the petitioners.
Mr. J. Reis, Senior Counsel a/w. Ms. K.J.Mastakar, for BMC.

Mr. Ameet Mehta i/b. Solicis Lex, for respondent Nos. 4 to 10.
Ms. Deepti Panda a/w Mr. Ganesh Ambekar i/b. Thakare Jariwala
and Associates for intervener.
Mr. Paresh Vora Respondent No.2 in person
Dr. M.S.Deshpande, Court Receiver, High Court of Bombay.

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**CORAM : NARESH H. PATIL AND
M.S. KARNIK, JJ.**

20th December, 2016.

P.C.:

1. Rule. Rule is made returnable forthwith. Heard finally by consent of the parties.
2. We have perused the order dated 13.06.2016 passed by the Corporation for renewal of permit of the hoarding license, the operative portion of the said order is as under:

“1) The order of 1st appellate authority is set aside.

2) The appeals are allowed.

3) The renewal of permit nos. 795829740, 795829751, 795829752, 795829753 & 795829754 for a period of two years from the date of this order is allowed.

4) M/s Creation shall apply afresh for the reconstruction of the collapsed hoarding in the compound of the Herra Panna CHS and Superintendent of Licenses shall scrutinize it on its merits and as per the Policy Guidelines 2007.”

3. Learned Counsel appearing for the petitioner submits that some of the shop owners, members of the society have raised an objection to renewal of license, erection of hoardings. He submits that the hoardings erected over the building are to be removed. They are obstructing sea view and some of the occupants of the residential area are apprehending danger to human life. During the course of hearing, it transpires that in City Civil Courts, suits are pending between the Respondent No.2 and the society members in which the Court Receiver has been appointed vide order dated 3.11.1995. We have also noticed during the hearing that society formed by members of 'Heerra Panna' structure includes occupants of residential cum commercial area. There seems to be dispute prevailing between the members. It is

informed that the developer is yet to execute a final conveyance deed in favour of the society.

4. The Registrar, Cooperative Housing Societies shall intervene and try to sort out the issues so that the prevailing issues could be amicably settled.

5. It is informed that the auction money is deposited by the Court Receiver, which is ultimately invested in Bank according to the order passed by this Court. The accumulated amount so far is more than 9 Crores (as per face value of fixed deposit). During the Course of hearing, the parties informed that accumulated amount is near about 20 Crores.

6. The Counsel appearing for the society submits that civil proceedings are already initiated in the City Civil Court for getting the conveyance deed executed and the trial is in process.

7. The issue now before us is, as to whether to allow the respondent No.2 herein to reconstruct the hoarding as per the directions issued by the Corporation.

8. We allow the respondent No.2 to reconstruct the said hoarding according to the order passed by the Corporation under

the supervision of the experts deputed by the Respondent No.2 and the experts deputed by the Court Receiver. The expert deputed by the Court Receiver after erection of the hoarding shall certify that the hoarding has been erected in proper form and in accordance with the technical specification.

9. The Senior Counsel appearing for the Corporation submits that after verifying the necessary technical aspects of the existing structure, the Corporation authorities have taken decision to renew the license and allow to reconstruct the hoarding which had collapsed.

10. We direct the Corporation authorities to be vigilant and to take action in future if it is informed at any point of time that any hoarding would be dangerous to human life or would damage the structure on which it is erected. The respondent No.2 shall be responsible in case of any loss and damage caused due to the erection of hoarding.

11. We find that the parties, unfortunately are litigating since more than 35 years on various issues. The parties may contemplate referring all the necessary and relevant issues to a Mediator so that an attempt would be made to resolve this issue

finally.

12. The Counsel appearing for the society submits that, white washed hoardings now may be permitted for auction.

13. At this stage, the Counsel appearing for the society brought to our notice clause 2 of the order dated 15.01.2016 passed by the Division Bench (Coram : A.S.Oka & C.V.Bhadang, JJ.) is as under :

“(ii) If the Second Appeal is preferred by the second Respondent, the same shall be disposed of within a period of three months from the date of filing of the Second Appeal. Needless to state that till the disposal of the Second Appeal, the second Respondent cannot display any advertisement on the hoardings subject matter of the Petition. The notice of the date fixed for hearing of the Second Appeal if preferred by the second Respondent shall be served to the petitioners to enable the petitioners to participate in the proceedings.”

The Counsel submitted that the Second Appeal has been disposed of by granting renewal permission by the Court. The Court Receiver be permitted to auction the hoarding sites

14. We heard learned Counsel appearing for the petitioner, learned Senior Counsel appearing for the Corporation and the Counsel appearing for the society on these issues.

15. We observe that, the order passed earlier, permitting

the Court Receiver to conduct the auction of the hoardings as per the practices carried out by the Court Receiver be adopted now. The Court Receiver should deposit the auction money as permitted by Court earlier in the Bank in fixed deposit scheme. The Court Receiver is present in Court and has briefed the Court.

16. In the facts, we direct the City Civil Court to expedite the final hearing of the suit No.9875 of 1988. The contesting parties shall cooperate with the Court in final disposal of the suit.

17. With the aforesaid observations and direction, Petition is disposed of. It is clarified that we have not expressed any conclusive opinion on merits in respect of the pending issues between the parties.

18. Rule is made absolute in above terms.

(M.S.KARNIK, J)

(NARESH H. PATIL, J)