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

PUBLIC INTEREST LITIGATION No. 50 OF 2015

Shaikh Ilyas Bashir

....Petitioner

Vs.

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

....Respondents

Mr. Yusuf Khan along with A. Hussain for Petitioner
Mr. A.Y. Sakhare, Senior Advocate a/w. Ms. Trupti Puranik for BMC
Mr. Kamlesh Ghumre for MHADA
Mr. S.D. Yadav, S.E. (Roads) w/s. H/E Ward present
Mr. Mohit Jadhav, AGP for Respondent No.4

***CORAM : V. M. KANADE &
SMT. SWAPNA S. JOSHI, JJ***

DATE : AUGUST 30, 2016

P.C. :

1. Heard the learned counsel appearing on behalf of the Petitioner, Shri Sakhare, learned Senior Counsel appearing on behalf of the BMC and Shri Kamlesh Ghumre, learned counsel appearing on behalf of the MHADA.

2. The Petitioner has filed this PIL, seeking an appropriate writ, order and direction, directing the Bombay Municipal Corporation to

carry out the repairs and maintain the road known as Tata Vasahat Marg, which is situated at Bharat Nagar, Bandra Kurla Complex (for short 'the said road'). The Petitioner is a Municipal Corporator, elected from Ward No. 85 in the general elections held in the year 2012.

3. It is the case of the Petitioner that he had made several representations to the Municipal Corporation, asking them to maintain the said road situated in Ward No.85. However, the Corporation has taken a stand that MHADA Authorities were required to improve and maintain the said road. The Petitioner, therefore, was constrained to approach to this Court by filing the PIL under Article 226 of the Constitution of India.

4. The Corporation has filed an affidavit in reply. Shri Sakhare learned Senior Counsel appearing on behalf of the Corporation has submitted that they are willing to improve the road and maintain it. However, he submitted that the MMRDA, MHADA and SRA should permit the Corporation to recover the development charges from the developer who insists that the developing agency should pay the prorata charges of the said road to the Municipal Corporation as per the relevant provisions which are enforced at the relevant time.

5. The learned counsel appearing on behalf of the MHADA, after taking instructions, submitted that the MHADA /SRA should put a condition of development of the Bharat Nagar area and the developer should be asked to pay the prorata charges to the MCGM.

6. In view of this submission made by MHADA, in our view, there is no impediment for the Corporation in carrying out the repairs and reconstruction of the said road. This process to be completed within a period of four months. No extension will be granted in any circumstances.

7. It is a matter of record that even the B.E.S.T. has informed the Petitioner that on account of the potholes in the vicinity of Bharat Nagar area, even the buses of the B.E.S.T. is not in position to use ply their buses on this road. Though we have said that the work of repairs and reconstruction should be carried out within four months, the Corporation shall made endeavor to do it as quickly as possible and the time of four months is an outer limit, within which this work should be completed.

8. It is a matter of common knowledge that due to the heavy

monsoon in this year practically all the roads in Mumbai have been damaged and the potholes are created practically everywhere and this has resulted in death of few people. So far as the other roads are concerned, the Corporation is under the statutory obligation under section 61(m) r/w. 3(W), 3(X) of the Mumbai Municipal Corporation Act, 1888 to maintain and improve all the public roads (public streets). We are informed that the Corporation has started taking action against those contractors, who were not done their work properly and an order of blacklisting has also been passed against these contractors.

9. It is a settled position in law that by virtue of the 74th Amendment, Article 243W was introduced in the Constitution of India with effect from 1.6.1993 and the power conferred on the Corporation cannot be transferred to any other body. We hope and trust that the Corporation shall repair all the roads within a reasonable period of time and ensure that the situation which has occurred on account of heavy monsoon in this year, will not occur in future. With these directions, the PIL is disposed of.

SMT. SWAPNA S. JOSHI, J.

V.M. KANADE, J.