

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 3051 OF 2016

Baldevprasad Ramavdh Gupta .. Petitioner
Vs.
Mumbai Municipal Corporation
for Greater Bombay and ors. .. Respondents

Mr.C.K.Tripathi, for the Petitioner.
Ms.Vandana Mahadik, for BMC.

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

07th DECEMBER, 2016

P.C. :

. Regarding the subject structure, litigation is going on since last 16 years starting from filing of L.C. Suit No. 2110 of 2000 till filing of the present Writ Petition. Writ Petition Stamp No. 30780 of 2015 is also said to be pending before this Court wherein the learned Single Judge (Coram: R.K.Deshpande, J.) during vacation passed order on 06/11/2015 which reads thus :

“. Issue notice for final disposal of the matter to the respondents, returnable after eight weeks. Service by RPAD is allowed in addition to usual mode of service.

2. The question involved is whether the Execution

Application No.22 of 2012 filed by the petitioner was in respect of the property whichever was the subject matter of the L.C.Suit No.2097 of 2000 and L.C.Suit No.483 of 2008.

3. There shall be ad-interim relief in terms of prayer clause (c) which is reproduced below :

“(c) Pending the hearing and final disposal of this petition this Hon'ble Court by its appropriate Writ order and direction be pleased to restrain the respondent and their officers, servants and agents and/or under them from taking coercive action against the decree premises admeasuring about 13 x 70, made of Patra sheet wall and A.C.Sheet Roof on land bearing survey No.81 (part) situated near Lido Cinema, Jaiswala Wadi, Sona Villa, Juhu Road, Santacruz (W), Mumbai – 400 049 in S.C.Suit No.483 of 2008 in decree dated 1st September, 2009.”

2. Further Writ Petition Stamp No. 1582 of 2016 was filed seeking direction to the Corporation to decide the question of repair of the subject structure. By an order dated 22/06/2016, the Division Bench of this Court (Coram : Shantanu Kemar & Makarand Karnik, JJ.) passed the following order.

“The grievance of the Petitioner is that in spite of application being made on 23rd November, 2009 followed by reminders dated 30th October, 2014 and 5th May, 2016 seeking permission to repair the premises in question, the Respondent has not decided the application as yet.

2. The learned counsel for the Respondent-Corporation on instruction submits that the Petitioner's application for grant of permission to

repair the premises will be considered and appropriate decision in accordance with law will be taken on it as expeditiously as possible.

3. In view of the aforesaid submission, we dispose of this Petition by directing the competent authority of Corporation to decide the pending application for repair as expeditiously as possible but not later than one month from the date of receipt of copy of this order.”

3. The petitioner is now aggrieved by the communication dated 30/07/2016 made by the Corporation wherein it is stated that application for repair permission cannot be considered in view of pendency of Writ Petition Stamp No 30780 of 2015 arising out of LC. Suit No. 438 of 2008.

4. Learned Counsel appearing for the petitioner and respondent differed on various factual aspects of the matter relating to the structure. Learned Counsel appearing for the Corporation submits that the petitioner is unauthorisedly repairing and erecting on the said site, but as the Petitions are pending, the Corporation is unable to take any step.

5. We find that disputed question arises in respect of

the consideration of application of repairs. Writ petition is already pending before this Court arising out of the order passed by the Civil Court. In the facts, we are not inclined to exercise our writ jurisdiction. Petition is disposed of.

(M.S.KARNIK, J.)

(NARESH H. PATIL, J.)