

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.95 OF 2016

Raghuleela Mega Mall Kandivali (West)	
Premises Co-operative Society Ltd.	..Petitioner
Versus	
The State of Maharashtra and ors.	..Respondents

Mr. Ashish Mehta along Ms. Shruti Khandelwal, advocates for the petitioner.

Mr. J. P. Yagnik, APP for the State.

Mr. Anil C. Singh, senior counsel with Ms.Surekha Sonawane and Mr. Kunal Waghmare, advocates for BMC.

Mr. Chirag Balsara along with Mr. Aditya Deaolekar and Ms. Ketaki Pali i/b.Diamondwala and Co., advocates for respondent Nos. 5, 17 and 24.

Mr. Yadunath Chaudhari along with Mr. Onkar Kulkarni, advocate for respondent Nos. 6 and 7.

Ms. Manjiri S. Parasnis, advocate for respondent Nos. 10 to 14.

Mr. S. Y. Ambre, advocate for respondent No.15.

Mr. G. S. Godbole along with Ms. Niyathi Kalra i/b. Negandhi Shah and Himayatullah, advocate for respondent No.27.

Mr. L. B. Tiwari, advocate for intervenor in criminal application No.28 of 2017.

CORAM : RANJIT MORE,
DR. SHALINI PHANSALKAR-
JOSHI, J J.

DATE : 7th FEBRUARY, 2017.

P. C. :

Heard learned senior counsel, learned counsel and learned APP appearing for the respective parties.

2. The petition is filed for following reliefs:

A) *This Hon'ble Court may be pleased to issue a writ of mandamus or a writ, direction or order in the nature of the mandamus or any other appropriate writ, direction or order under Article 226 of the Constitution of India thereby directing Respondent Nos. 1 to 3 to initiate criminal prosecution and register offence against Respondent Nos. 4 to 28 within two weeks from the date of this Hon'ble Court's Order;*

B) *This Hon'ble Court may be pleased to issue a writ of mandamus or a writ, direction or order in the nature of the mandamus or any other appropriate writ, direction or order under Article 226 of the Constitution of India thereby constituting a Special Investigation Team (SIT) for carrying out the investigation of the offence directed to be registered under prayer clause (A) under its supervision;*

C) *This Hon'ble Court may be pleased to issue a writ of certiorari or any writs, direction or order in the nature of the certiorari or any other appropriate writ, direction or order under Article 226 of the Constitution of India and thereby be pleased to direct any high ranking officer of this Hon'ble Court or the Maharashtra Police to inspect/survey/search the suit premises and prepare a comprehensive Report of the actual position of the same and place the same before this Hon'ble Court within two weeks from the date of this Hon'ble Court's Order;*

The aforesaid reliefs are sought on the allegations that Kandivali Police Station has not acted upon the petitioner's complaint dated 31st December, 2015, a copy of which is annexed at Exhibit – AJ, page 282.

3. Having gone through the said complaint, we find that the petitioner has alleged that respondent No.7-Developer has without the permission of the petitioner co-operative society constructed on 3rd, 4th and 5th floors of the building in question. Learned counsel for the petitioner does not dispute that a dispute in this regard is taken by respondent No.7 in the Civil Court and has obtained ad-interim injunction. The petitioner has also filed an application in the Civil Court for vacating the said injunction. Be that as it may, the In-charge Officer of the Kandivali Police Station has made preliminary enquiry into the petitioner's complaint and has registered NC complaint as according to him the said complaint does not disclose commission of cognizable offence and especially when the dispute is pending in the Civil Court. In these circumstances, we are not inclined to entertain this petition by exercising the extraordinary jurisdiction conferred upon this Court under Article 226 of the Constitution of India, especially when the petitioner has an efficacious alternate remedy to approach the concerned magistrate by way of private complaint. The petition is, accordingly, dismissed.

4. In view of disposal of the writ petition, the criminal application No.28 of 2017 will not survive for consideration and the same is also dismissed.

(DR. SHALINI PHANSALKAR-JOSHI)

[RANJIT MORE, J.]