

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.76 OF 2016

Mumbai Municipal Corporation ... **Applicant**

V/s.

Ashok P. Mastakar & Anr. ... **Respondents**

....

Mr.Sudeep Pasbola i/b. Rahul Arote, Advocate for the Applicant.

Mr.Prasad Gaonkar, Advocate for the Respondent No.1.

Mr.Ameet Palkar, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 30th MARCH 2017.

P.C. :

1 Heard both sides and perused the Judgment and Order of acquittal of the respondent of the offence punishable under Section 457-A of the Mumbai Municipal Corporation Act.

2 Perusal of impugned Judgment and Order shows that the learned trial Magistrate has directed the Municipal Commissioner to carry out the repairs of the disputed structure after holding that it is in dilapidated condition. Thus the question for consideration is whether such direction can be given and are permissible under section 489 of the said Act. On this count, the impugned Judgment and Order needs to be examined particularly

in the light of the findings that the notices were not served to the owner of the premises.

3 Though it is urged that the direction to repair the dilapidated structure be stayed during pendency of the appeal, the prayer so made is rejected particularly in the light of finding to the effect that the building is in dangerously dilapidated condition.

4 In this view of the matter leave, as prayed, is granted.

5 The application be treated as Memo of Appeal.

6 The appeal is admitted.

7 Issue notice to the respondents.

8 The learned counsel Mr.Gaonkar waives notice for respondent No.1.

9 The learned Additional Public Prosecutor waives notice for respondent No.2/State.

10 Call for Record and Proceedings.

11 In view of action under section 390 of the Code of Criminal Procedure, the respondent No.1 to execute fresh bond of Rs.15,000/- with same bail.

(A.M.BADAR J.)