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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5775 OF 2015

Shri. Sai Samarth Jeshth Nagrik Sangh	... Petitioner
Vs.	
The State of Maharashtra and Ors.	... Respondents

Mr. Pravin Gole i/by Mr. Shrishailya S. Deshmukh for the Petitioner.
Mrs. R.A. Salunkhe, AGP for the Respondent No.1.
Mr. Akshay Kapadia i/by J. Shekhar & Co. for the Respondent Nos.2 and 3.

**CORAM : A.S. OKA &
RIYAZ I. CHAGLA, JJ.**

DATE : 20th MARCH, 2018

PC.

1 Heard the learned counsel appearing for the petitioner. The grievance made by the petitioner which is a registered Public Trust under the Maharashtra Public Trust Act, 1950 is as regards the failure of the Nashik Municipal Corporation which is a Corporation established under the Maharashtra Municipal Corporations Act, 1949 to take action of preventing and checking of the spread of dangerous diseases like malaria and other infectious diseases. This Petition was filed when the event of Kumbha Mela was approaching. Large number of devotees were expected to visit the City of Nashik. There is a detailed order passed by this Court on 27th October, 2016 directing the Municipal Corporation to file a reply. However, reply has not been filed.

2 The petitioner before invoking a remedy of Writ Petition under Article 226 for seeking a writ of mandamus has not made any representation to the Nashik Municipal Corporation. The petitioner is relying upon a representation made to the Hon'ble Health Minister of the State by certain citizens.

3 Our attention is invited to Section 63 of the said Act of 1949 which contains obligatory duties of the Municipal Corporation. In this Petition, we are concerned with clauses (6) and (21) of Section 63 which reads thus :-

“(6) the construction or acquisition and maintenance of public hospitals and dispensaries including hospitals for the isolation and treatment of persons suffering or suspected to be infected with a contagious or infectious disease and carry out other measures necessary for public medical relief;

(21) preventing and checking the spread of dangerous diseases.”

4 We have perused the annexures to the Petition. Certain correspondence made by Health Officer of the Municipal Corporation has been annexed.

5 Under clause (21) of Section 63, it is the obligation of the Nashik Municipal Corporation to take all possible steps for preventing and checking spread of dangerous diseases like malaria and other infectious diseases. For checking the spread of such diseases, even the obligation under clause (6) of Section 63 will have to be complied with.

6 This Petition is filed in the year 2015. Nothing is placed on record by the petitioner as well as the Municipal Corporation to show the steps, if any, taken between August, 2015 till today. We, therefore, propose to permit the petitioner to make a detailed representation to the Municipal Corporation pointing out the duty of the Municipal Corporation to comply with the statutory obligations under clauses (6) and (21) of Section 63 of the said Act of 1949.

7 The representation will have to be looked into by the Municipal Corporation and appropriate action will have to be taken by the Municipal Corporation.

8 Accordingly, we dispose of the Petition by passing the following order :-

ORDER

- (i) It will be open for the petitioner to make a detailed representation to the Nashik Municipal Corporation calling upon the said Corporation to comply with its legal obligations under clauses (6) and (21) of Section 63 of the said Act of 1949. If the said representation is made, the Municipal Corporation shall look into the representation and inform the petitioner about the steps taken or steps proposed to be taken by the Municipal

Corporation. Such information shall be furnished to the petitioner by the Municipal Corporation within a period of one month from the date of filing of the representation;

- (ii) If the petitioner finds that the Municipal Corporation has failed to discharge its mandatory obligations after expiry of a reasonable time from the date of making representation, it will be always open for the petitioner to file a fresh Petition in this Court for seeking appropriate reliefs;
- (iii) The Petition is disposed of with the above directions. Pending Civil Application, if any, does not survive and the same stands disposed of accordingly;
- (iv) Nashik Municipal Corporation shall act upon an authenticated copy of this order.

(RIYAZ I. CHAGLA, J)

(A.S. OKA, J)