

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1676 OF 2017

IN

CRIMINAL APPEAL NO.309 OF 2017

MUMBAI MUNICIPAL CORPORATION

G/N WARD, MUMBAI

)

)...APPLICANT

V/s.

ASHOK P. MASTAKAR AND ANR.

)...RESPONDENTS

Mr. Shirish Gupte, Senior Advocate, a/w. Mr. Kunal Waghmare,
Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 10th APRIL 2018

P.C. :

1 Heard both sides.

2 The learned senior counsel appearing for the applicant
Municipal Corporation drew my attention to the provisions of
Section 489 of the Mumbai Municipal Corporation Act, 1888, and
contended that Clause (3) of the judgment and order dated 6th

October 2015 directing the Municipal Commissioner to repair the disputed structure at the cost of the owner is *per se* illegal and without jurisdiction. The learned Advocate appearing for the respondent no.1 contended that the court has every power to issue such direction.

3 Perusal of Section 489 of the Mumbai Municipal Corporation Act, 1888, shows that it is the Municipal Commissioner, who can direct the owner of the structure to make necessary repairs and it does not empower the Metropolitan Magistrate to issue such directions to the Municipal Commissioner. Hence, Clause (3) of the operative portion of the impugned judgment and order dated 6th October 2015 passed by the learned Metropolitan Magistrate, 41st Court, Shindewadi, Dadar, Mumbai, in Case No.4100/49/2013 is stayed till disposal of the appeal.

4 The application is disposed of accordingly.

(A. M. BADAR, J.)