

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 179 OF 2015

|                          |   |             |
|--------------------------|---|-------------|
| Samir Pratap Ruparelia   | } | Petitioner  |
| versus                   |   |             |
| The State of Maharashtra | } |             |
| and Ors.                 | } | Respondents |

Mr.Shreepad Murthy i/b. Mr.Anand Nikhal for the petitioner.

Mr.R.J.mane-AGP for State.

Ms.Vandana Mahadik for the Municipal Corporation.

CORAM :- S. C. DHARMADHIKARI &  
G. S. PATEL, JJ.

DATED :- JULY 3, 2019

P.C. :-

1. After having heard Mr.Murthy at some length, we find that the writ petition is not the appropriate remedy for the petitioner. In the petition itself, the petitioner has stated that Short Cause Suit No.1174 of 2014 was filed in the City Civil Court at Mumbai. The petitioner says now that this petition is filed because there is a breach of the statutory duty, particularly under section 352A(3) of the Mumbai Municipal Corporation Act, 1888. The petitioner can seek enforcement of this statutory obligation/mandate flowing from this provision and in our view, once the

substantive suit is pending, the petitioner can seek leave to amend the same and incorporate therein the relief or prayer to seek damages as well. The damages can be sought inviting the attention of the civil court to sub-section (3) of section 352A of the Act. This sub-section empowers the State Government or the Secretary to the State Government, authorised by the State Government in this behalf, to either *sou-motu* or on an application made within the specified period, call for and examine the record of any case in which the designated officer has taken such action for the purpose of satisfying himself as to the legality or propriety of such action and may, after giving to the persons concerned a reasonable opportunity of being heard, pass such orders thereon as he deems just, including any order for compensation, which shall be paid by the Municipal Corporation to any person for any wrongful damage or loss incurred by such action.

**2.** To our mind, once the action initiated under section 351 and whole proceedings are found to be illegal and unlawful and declared to that effect, then, independent of section 352A(3), the civil court is not powerless and can always consider the claim of the nature presented before us in this writ petition. We do not think that the petitioner has approached this court only for the purpose of claiming such relief of damages or compensation,

which, in the given case is incidental and ancillary. Granting liberty to move the civil court either in the pending civil suit or by filing substantive proceedings, we dispose of the writ petition.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)