

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

**APPEAL LODGING NO.43 OF 2019
IN
NOTICE OF MOTION NO.700 OF 2018
IN
SUIT NO.95 OF 2014
WITH
NOTICE OF MOTION LODGING NO.74 OF 2019
IN
APPEAL LODGING NO.43 OF 2019**

Ashwamedh Co-operative Housing
Society Ltd.

..... Appellants.

Versus

Municipal Corporation of Greater
Mumbai and others

..... Respondents

Mr. Ram Apte, Senior Advocate a/w Mr. Prathmesh Seth I/by Joseph B Fernandes for the Appellants.

Mr. A. Y. Sakhare, Senior Advocate a/w Mr. Joel Carlos and Ms. D S Shingade for Respondent No.1 – MCGM.

Mr. Aniruddha Joshi a.w Mr. Vishal Kanade, Mr. Atul Kshetriya and Mr. Ankur Kalel I/by Markand Gandhi and Co. for Respondent No.2.

Mr. M A Sayyed, AGP for Respondent Nos.6 and 7 – State.

**CORAM : NARESH H. PATIL, C.J. &
N. M. JAMDAR, J.**

DATE : 15 FEBRUARY 2019

P.C.

1 Mr. Ram Apte, Senior Counsel appearing for the Appellants-Society, on instructions, had submitted that the Appellants would join the rehab components of the building. The said statement has been recorded in the order passed by us on 8 February 2019.

2 Mr. A Y Sakhare, Senior Counsel appearing for Respondent No.1 - MCGM had submitted that the Corporation has decided to treat the Appellants as non-cooperative members by dis-entitling them to now occupy the rehab components of the same building.

3 Both the parties were to take fresh instructions on this issue to ascertain whether by way of final settlement, the Appellant would give up the suit and would be allowed to join rehab components of the same building.

4 Mr. A Y Sakhare, Senior Counsel appearing for Respondent No.1 - MCGM submits that the decision has already been taken which was approved by the Commissioner. The learned Senior Counsel on instructions submits that the Corporation would maintain the said decision in respect of the Appellants by treating them as non-cooperative members. The copy of the decision has been shown to us by the learned Senior Counsel, which we have returned after perusal.

5 This Appeal arises against the order passed in the Notice of Motion No.700 of 2018 seeking a stay to the operation of letter dated 23 October 2015 issued by the Assistant Commissioner of the Corporation. By the said communication the Appellants and the similarly situated persons residing in the tenement of the Corporation were directed to shift to the occupation of rehab components of the building. We are informed that out of 64, thirty eight occupants have shifted, and 26 still holding the

old premises and are before this Court as the members of the Society.

6 Mr. Ram Apte, Senior Counsel appearing for the Appellants, on instructions of the representatives of the Society, reiterated the said stand that they would shift to the rehab components of the building. Mr. Apte submits that the members of the Appellants tried to contact and meet the Commissioner but they did not get the appointment of the Commissioner, which statement has not been accepted by Mr. Sakhare who submits that the Commissioner is always ready to meet such delegation. We do not express any opinion on the same.

7 In this view of the matter, we observe that in case the Appellants now desire to resort to file appropriate proceedings as regards the decision taken by the Corporation which, Mr. Sakhare submits would be communicated to the Appellant within one week from today, they may do so as advised.

8 In view of the statement made by Mr. Apte, nothing survives in this Appeal now to be decided as the Appellants have expressed their willingness to abide as per communication dated 23 October 2015 which was under challenge in the Notice of Motion.

9 Mr. Apte submits that as and when they resort to filing appropriate proceedings in the pending suit, the learned Judge hearing the said Notice of Motion would dealt with that issue without being influenced by the observations made regarding the Appellants being referred to as non-

cooperative members of the Society by the Corporation.

10 We clarify that in case the Appellants file appropriate proceedings in respect of the decision to be communicated to them and such an issue is brought before the Court in the pending suit, the Court will deal with that motion without being influenced by the observations made regarding treating the Appellants as non-cooperative members only to that extent. It is clarified that the other conclusions drawn by the learned Single Judge and the findings reached on other issues need not be re-opened again.

11 The Appeal stands disposed of.

12 In view of the disposal of the Appeal, Notice of Motion No. 74 of 2019 does not survive and the same is accordingly disposed of.

13 Mr.Apte submits that they have apprehension that their possession may be disturbed before they could resort to file the appropriate proceedings on the receipt of the copy of the decision of the Corporation. We therefore direct that for a period of two weeks from today the parties to maintain status quo in respect of the old structures occupied by the concerned members of the Society.

N. M. JAMDAR, J.

CHIEF JUSTICE