

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

NOTE (STAMP) NO. 1665 OF 2020

IN

CRI. WRIT PETITION NO. 302 OF 2020

(SUNITA JUGALKISHOR GILDA...VS. MUNICIPAL CORPORATION, AMRAVATI & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri N.B.Kalwaghe, Advocate for Applicant/Petitioner.
Shri R.D.Dharmadhikari, Advocate for Respondent No. 1.
Shri Purushottam Patil, Advocate for Respondent No.2.

CORAM : Z.A.HAQ & AVINASH G. GHAROTE, JJ.
DATED : SEPTEMBER 28, 2020.

Heard learned Advocate for the petitioner and
learned Advocate for the respondents.

2. The learned Advocate for the respondents submit that the modification of paragraph No.4 of the judgment, as sought by the petitioner, may be granted and they have no objection for it.

3. Accepting the grievance made by the petitioner, it is directed that paragraph No.4 of the judgment delivered in Writ Petition No.302 of 2020 on 21st August 2020 be deleted and substituted by following paragraph No.4-A :

“4-A. The learned Advocate for the respondent No.3 relied on the judgment delivered by the Division Bench of this Court in the case of *Municipal Corporation of Greater Mumbai vs.. State of Maharashtra*, reported in **2018 SCC OnLine Bom. 816** and contended that in appropriate case if the facts warrant, a party should be relegated to the Civil

Court. The learned Advocate for the petitioner referred to paragraph No.16 of the same judgment and argued that it would not be a thumb Rule that this Court cannot exercise extraordinary jurisdiction in appropriate cases. Paragraph No.16 of the judgment delivered in the case of the *Municipal Corporation VS. State of Maharashtra* (supra) refers to paragraph 20 of the judgment given by the Hon'ble Supreme Court in the case of *Makarand Dattatreya Sugavkar vs. Municipal Corpn. of, Greater Mumbai*, reported in (2013) 9 SCC 136, which is as follows :

“20. Although, most of the above mentioned provisions are intended to benefit the public at large, some of them are also meant for the benefit of private individuals. The primary object underlying Section 354 is to safeguard the public from the danger of being forced to live in a structure, which includes any building, wall or other structure and which is in a ruinous condition or is likely to fall or is in any way dangerous to any person occupying the same. This section is also intended to protect those who may pass by such structure. A reading of the plain language of Section 489 gives an impression that it is only an enabling provision but if the same is read keeping in view the purpose of its enactment and the setting in which it is placed, it becomes clear that the Commissioner is duty bound to ensure that the written notice given to the owner or occupier under Section 354(1) is implemented in its letter and spirit. The duty cast upon the Commissioner is in the nature of a public law obligation and in appropriate case, the Court can issue direction for its enforcement. (Emphasis supplied)

We find substance in the submission made by the learned Advocate for the petitioner and relying on the above legal propositions we overrule the technical objection raised on behalf of the respondent No.3.”

4. Registry is directed to carryout the modification as above in the judgment and supply certified copy of the judgment to the parties free of costs.

The Criminal Application is **allowed** accordingly.

CRI. APPLN.NO.72/2020.

This application is listed today along with Note Stamp No. 1665 of 2020.

2. Shri P.B.Patil, Advocate appeared for the original respondent No.3-Bhaskar Vasantao Jawarkar in Note Stamp No.1665 of 2020. However, he submitted that he is not having any instructions to appear in Criminal Application No. 72 of 2020.

3. Heard Shri N.B.Kalwaghe learned Advocate for the petitioner and Shri R.D.Dharmadhikari learned Advocate for the original respondent No.1-Corporation.

4. The grievance of the petitioner is that inspite of the directions given by this Court by the judgment delivered in Criminal Writ Petition No. 302 of 2020 on 21st August 2020, the respondents in this Criminal Application have not taken any steps to implement the notice issued by the Municipal Corporation on 22nd June, 2018. The directions given by this Court in paragraph No.9 are as follows:

“9] In view of the above, following order is passed:

a) The respondent no.1- Municipal Corporation shall proceed to implement the notice dated 22.06.2018 and complete the process within four weeks.

b) As assured of behalf of the respondent no.2- Commissioner of Police, police aid be

granted to the respondent no.1-Municipal Corporation.

c) The respondent no.1-Municipal Corporation shall intimate the date on which it intends to take action as per the notice dated 22.06.2018, in writing to the respondent no.2-Commissioner of Police. The submission made on behalf of respondent no.2-Commissioner of Police that police aid would be made available on that day is recorded and accepted.”

5. The learned Advocate for the petitioner has pointed out that the respondents in this Criminal Application are trying to overreach the directions given by this Court and with ulterior object have issued notice dated 8th September 2020 calling upon the parties to remain present for re-inspection. The notice dated 10th January 2019 is pointed out which requires original respondent No.3-Bhaskar Vasantrao Jawarkar and the petitioner to demolish the entire structure in question.

6. After hearing the learned Advocate for the petitioner and the learned Advocate for the respondent No.1, *prima-facie* we find that the notice issued by the respondent No.1 on 8th September 2020 is tainted with malafides.

7. Issue notice to Non-applicant No.1-Suhas Chavan, Deputy Engineer, Zone No.2, Municipal Corporation, Amravati and Non-applicant No.2 (original respondent No.3) – Bhaskar Vasantrao Jawarkar to show cause as to why the proceedings under Article 215 of the Constitution of India and the provisions of the Contempt of Courts Act, 1971 should not be initiated against them for attempting to overreach the directions given by this Court by the judgment delivered in Criminal Writ Petition No. 302 of 2020 on 21st August 2020.

8. The respondents shall file their reply/affidavit till 8th October 2020.

9. List the criminal application for further consideration/ hearing on **12th October 2020**.

10. If the reply/ affidavit is not filed within time as directed by this order, the defaulting respondent shall remain present before this Court on 12th October 2020 at 10:30 a.m.

(AVINASH G. GHAROTE, J)

(Z.A.HAQ, J.)

RRaut..