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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 435 OF 2022

Shri. Amrutlal Ketmal ShahPetitioner

V/s.

Kolhapur Municipal Corporation, KolhapurRespondents
and others

Mr. Drupad S. Patil i/b Mr. D. D. Patil Advocate for the Petitioner.
Mr. Abhijit Adagule Advocate for Respondent Nos. 1 to 3.

CORAM : NITIN JAMDAR &
GAURI GODSE, JJ.

DATE : 22 DECEMBER 2022.

P.C.

On 15 December 2022, following order was passed.

“By this Petition, the Petitioner has challenged the order passed by the Respondent - Corporation dated 1 October 2020 directing the Petitioner to pay the amount stipulated therein and hand over the possession of the building,

2. The learned Counsel for the Respondent -

Corporation takes a preliminary objection that the Petitioner has an alternate remedy of filing an appeal under Section 47 of the Maharashtra Regional & Town Planning Act, 1966 to the State Government, which the Petitioner has already availed of. The Respondent-Corporation further states that till date the notice as regard demanding payment is not given effect to and the same position can continue till the disposal of the appeal. There is however dispute as to whether the Petitioner is in possession of the premises.

3. According to the learned Counsel for the Petitioner, the possession was taken over by the Respondent - Corporation during the Covid-19 Pandemic and not returned. According to the Municipal Corporation the same has been returned and it is the Petitioner who is in possession.

4. That being the position, this narrow controversy can be resolved by directing the Collector, Kolhapur to depute an Officer who will draw a panchnama in the presence of the representative of the Respondent-Corporation as regarding the factum of physical possession.

5. For completing these formalities, stand over to 22 December 2022. To be listed under the caption "For Directions".

6. Office of the Government Pleader will inform the Collectorate, Kolhapur of this order".

2. None appears for the State to inform us whether the panchnama is

drawn. Learned counsel for Respondent Nos. 1 to 3 Municipal Corporation states that drawing of panchnama as directed by this Court on 15 December 2022 will not be necessary as the statement made by the Respondent-Corporation regarding possession of the premises was incorrect. Learned counsel for Respondent Nos. 1 to 3 tenders an apology and states that Petitioner's contention that currently physical possession of the premises in question is with the Corporation is correct. Learned counsel for the Respondent-Corporation states that during the pendency of appeal filed by the Petitioner and two weeks thereafter, impugned notices issued to the Petitioner will not be given effect to. In light of this position no further adjudication in this petition is warranted.

3. Writ petition is accordingly disposed of.
4. It is open to the Municipal Corporation to request the State Government to take the appeal filed by the Petitioner at an early date in view of the statement made by the learned counsel for Respondent-Corporation.
5. Needless to state that we have not commented on the merits of the factual position as regards the possession which would be decided in the appeal, and all contentions are kept open.
6. The Municipal Corporation shall forthwith communicate to the

Collectorate Office, Kolhapur of the order passed and that drawing of panchnama is not necessary.

[GAURI GODSE, J.]

[NITIN JAMDAR, J.]