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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION (CIVIL) NO. 206 OF 2023
IN
WRIT PETITION NO.6141 OF 2023

Uttam Appasaheb Warale

PETITIONER

VERSUS

The Chief Officer, Rahuri Municipal Council & Ors. RESPONDENTS

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Mr. Ajeet B. Kale, Advocate for the Petitioner

Mr. S. N. Gaikwad, Advocate for original Writ Petitioner

Mr. U. B. Bondar, Advocate for Respondent No.22

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[CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.]

DATE : OCTOBER 26, 2023

ORDER :

1. Writ petition No. 6141 of 2023 contained three prayers,
which read as under:

"A. Issue a writ of mandamus or any other appropriate writ, order or direction in the nature of writ of mandamus directing to respondent authority to implement, execute an order vide outward no. KAVI 02/02/531/2021 dtd. 01/09/2021 passed by respondent to close poultry farm situated in survey nos. 139/3/1 and 139/3/2 warale wasti, Rahuri (Bk) Tq. Rahuri Dist. Ahmednagar and for that purpose issue necessary orders.

B. Issue any other appropriate writ, order or direction in the nature of writ, thereby directed to Ld. Civil Judge, Junior Division, Rahuri, Tq-Rahuri, Dist-Ahmednagar to decide suit bearing registered RCS n.677/2021 pending file before it, to be decide as expeditiously as possible within period of six months and for that purpose issue necessary orders.

C. Pending the hearing and final disposal of this writ petition may kindly be issued directions to respondent authority to decide the representations and reminders dtd. 28/10/2022, 24.02.2023, 18/04/2023 submitted by the petitioner and for that purpose issue necessary orders."

2. The Review Petitioner is the poultry farm proprietor, who was not arrayed in the Writ Petition and prayer clause "A" reproduced above, actually aims at closing down his poultry farm. Prayer clause "B" pertains to a Suit preferred by the Review Petitioner challenging the order of closure of the poultry farm. Exhibit-5 Application seeking temporary injunction under Order 39, Rules 1 and 2 of the Civil Procedure Code, is awaiting orders. On 12th June, 2023, oblivious of the Review Petitioner having not been arrayed as a Respondent, we recorded in paragraph No. 4 – *"The Order mentioned in prayer clause "A" dated 01.09.2021 would be complied with by following due procedure laid down in law and without causing any delay".*

3. After hearing the learned advocates with reference to the Review Petition, we find that though our above reproduced direction may appear to be innocuous, the same order is subject matter of adjudication in Regular Civil Suit No. 677 of 2021, initiated by the Review Petitioner. Had the said proprietor being arrayed as Respondent before us, he would have pointed out to us that the implementation of the orders sought by the Petitioner is actually *subjudiced* before Civil Court. Since the proprietor of the Poultry Farm was not arrayed as the Respondent, the above aspect was out of sight.

4. It would be appropriate to record that while hearing the Review Application, this Court had issued certain orders. The Pollution Control Board accordingly visited the Poultry Farm of the Review Petitioner. The Review Application paper book and the affidavits filed in the said proceedings would indicate that the Poultry Farm, *prima facie*, is being operated by maintaining hygiene. Since the said issue would be considered by the Trial Court, while deciding Exhibit-5, we leave the said issue open to the Trial Court with liberty to the Review Petitioner as well as the original Defendant to tender additional documents, if advised.

5. In the above backdrop, this Review Application is partly Allowed. The direction set out in paragraph No.4 of our order

dated 12th June, 2023, reproduced in italics hereinabove, stands recalled. Since the suit is pending *inter se* between the Petitioner and the Review Petitioner, the Review Petition is disposed of by keeping all the contentions of the litigating parties open to be considered by the Civil Court.

[Y. G. KHOBRADE]
JUDGE

[RAVINDRA V. GHUGE]
JUDGE