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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

VASANT
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IDHOL

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Date: 2023.09.06
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WRIT PETITION NO.7569 OF 2023

Ratnakar J. Shetty

...Petitioner

V/s.

State of Maharashtra & Ors.

...Respondents

Mr.Akshay R. Kapadia for the Petitioner.

Mr.Sandeep D. Shinde for Respondent Nos.2 and 3 – Corporation.

Mr.Ratnakar Jayram Shetty (Tenant) present in Court.

Mr.Rajesh Velji Rathod (Owner) – Respondent No.4 present in Court.

Mr.Bharat Velji Rathod (Owner) – Respondent No.6 present in Court.

Mr.Y.D. Patil, AGP for the Respondent – State.

CORAM : SUNIL B. SHUKRE &
RAJESH S. PATIL, JJ.
DATE : 12TH JULY, 2023.

P.C. :-

1. The Petitioner to supply spare copy of the Petition.
2. We find that amendments have not been carried out properly to the cause title. We direct the Petitioner to carry out amendment in a proper manner and if required, by adding Respondents by giving type written details of the added Respondents. Proper amendment be carried out forthwith.
3. Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel for the parties.
4. The notice impugned in this Petition dated 24th May, 2023

requires the owner and the occupants of the subject building to carry out repairs to the building after getting permission for the same from the Corporation. The impugned notice also warns the owner and the occupants of the subject building that if they do not abide by the directions so contained in the notice and if any untoward incident occurs, the owner and the occupants of the subject building shall be solely responsible.

5. The learned counsel for the Petitioner submits that Petitioner has given his reply to the impugned notice and it has not been considered by the Corporation. He invites our attention to paragraph 5 of the Petition in support. Averments therein indicate that there is one application made by the Petitioner on 19th June, 2023, seeking permission to carry out repairs in the subject building. Learned counsel submits that if this application is decided appropriately by the Corporation, it would suffice the purpose of the Petition.

6. We find that this application has been made by the Petitioner after the impugned notice was received by him and that it has been made by the Petitioner not to the Corporation but to the State Government. At this juncture, the learned counsel for the Petitioner submits that there is one more application made by the Petitioner to the Corporation which is of the date of 23rd June, 2023

and if this application is directed to be decided by the Corporation, it would suffice the purpose of the Petition. The learned counsel for the Corporation agrees.

7. In view of above, we direct the Corporation to decide the application of the Petitioner dated 23rd June, 2023 at the earliest and in accordance with law, after giving an opportunity of hearing to the Petitioner and the owner. Liberty is granted to the Petitioner and the owner to file on record and submit to the Corporation another new structural audit report, if any. We direct that the Corporation, while deciding this application dated 23rd June, 2023, shall take into account the previous structural audit report and also a fresh structural audit report, if any. It would be also at liberty to carry out physical inspection of the subject building before any decision on the application of the Petitioner is taken. We further direct that no coercive steps shall be taken in respect of the subject building by the Corporation till it takes a decision in the matter. However, the interim relief so granted shall be subject to the condition that if any untoward incident occurs, it would be at the risk and the responsibility of the Petitioner alone.

8. Rule is made absolute in above terms.

(RAJESH S. PATIL, J.)

(SUNIL B. SHUKRE, J.)