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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.585 OF 2022

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Date: 2023.10.26
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Mukesh Mahadev Vaze & Ors. ... Applicants

V/s.

Dhananjay Vishnu Jadhav & Ors. ... Respondents

WITH

CIVIL REVISION APPLICATION NO.586 OF 2022

Mukesh Mahadev Vaze & Ors. ... Applicants

V/s.

Shamrao Pandurang Waghmode & Ors. ... Respondents

WITH

CIVIL REVISION APPLICATION NO.587 OF 2022

Mukesh Mahadev Vaze & Ors. ... Applicants

V/s.

Suresh Maruti Honmane & Ors. ... Respondents

WITH

CIVIL REVISION APPLICATION NO.588 OF 2022

Mukesh Mahadev Vaze & Ors. ... Applicants

V/s.

Ravindra Krushna Kadam & Ors. ... Respondents

WITH

CIVIL REVISION APPLICATION NO.589 OF 2022

Mukesh Mahadev Vaze & Ors. ... Applicants

V/s.

Nandkumar Rajaram Kadam & Ors. ... Respondents

WITH

CIVIL REVISION APPLICATION NO.590 OF 2022

Mukesh Mahadev Vaze & Ors. ... Applicants
V/s.
Pandurang Govind Waghmode & Ors. ... Respondents

**WITH
CIVIL REVISION APPLICATION NO.591 OF 2022**

Mukesh Mahadev Vaze & Ors. ... Applicants
V/s.
Ravindra Bapu Patil & Ors. ... Respondents

**WITH
CIVIL REVISION APPLICATION NO.616 OF 2022**

Mukesh Mahadev Vaze & Ors. ... Applicants
V/s.
Shalan Prakash Mokashi & Ors. ... Respondents

Mr. Kuldeep U. Nikam for the applicants.

Mr. Satish Kumbhar with Mr. Karan Singh Bhadoria
with Mr. Abhinandan Vagyani i/by Ms. Deepa A.
Vagyani for respondent No.1.

Ms. Tanaya Goswami, AGP for the State.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 25, 2023

P.C.:

1. Since the issue involved in all these revision applications is common, all revision applications are being decided by common judgment.

2. The respondent No.1 filed civil suit before the Civil Judge, Junior Division, Sangli seeking a declaration that the action of respondent corporation declaring a suit property as

dilapidated is in collusion with defendant Nos.3 to 6. The consequential injunction restraining defendant Nos.1 and 2 i.e. Municipal Corporation is also sought. However, injunction restraining defendants from disturbing possession of the plaintiff over the suit property is also requested.

3. During pendency of suit, defendant Nos.1 and 2 filed an application under Order 7 Rule 11(d) of the Civil Procedure Code, 1908 (hereafter, “the CPC”, for short). It is alleged that the suit is not maintainable for want of notice under section 487 of the Maharashtra Municipal Corporations Act, 1949 (hereafter, “the MMC Act”, for short), and the suit is barred by section 433(a) of the said Act.

4. By the impugned order, the Trial Court rejected the application. The applicants have, therefore, filed present revision applications.

5. Learned advocate for the applicants submitted that on plain reading of section 433(a) of the MMC Act subject to provisions of the Act, the power of Civil Court to entertain challenge to notice issued under section 260 of the Act is taken away. Therefore, according to the applicants, the right is created under a statute and remedy is also provided a statute. Therefore, the suit before the Civil Court is not maintainable.

6. The issue regarding maintainability of a suit challenging notice under section 260 of the MMC Act is no longer *res integra* in view of judgment of the Division Bench of this Court in **Abdul Karim Ahmed Mansoori vs. Municipal Corporation of Greater**

Mumbai and Another reported in 2014 (1) Mh.L.J. 227, the petition arose out of notice under section 354(a) of the Mumbai Municipal Corporation Act, 1888. However, the Division Bench of this Court considered provisions of section 433(a) of the MMC Act holding that the inherent jurisdiction of the Civil Court in a suit challenging notice under section 260 of the said Act is available on the limited grounds which are at page 235 of the judgment as under:

“**433-A**.....that the act of issuance of such notice is nullity, or that while issuing such notice, the mandatory provisions of the said Act have not been complied with, or that the Authority issuing such a notice has not acted in conformity with the fundamental judicial procedure, or that it is an abuse of exercise of power, or that the offending act has not been done in good faith, remains intact, in view of the aforestated law laid down in judicial pronouncement.”

7. It is held that the Civil Court is not precluded of its inherent jurisdiction to to entertain and decide such challenge to a notice under section 260 of the said Act, on such limited grounds as there is no other forum available under the said Act to ventilate such grievances of the plaintiff.

8. Considering the averments in the plaint, the plaintiff has pleaded that the action of defendant Nos.1 and 2 is not bona fide. The scope of application under Order 7 Rule 11(d) is restricted to the averments in the plaint. The truth or otherwise of the averments in the plaint cannot be gone into at the stage of consideration of application under Order 7 Rule 11 of the CPC. Since the plaintiffs have raised plea of action of defendant Nos.1

and 2 being mala fide, the rejection of an application by the Trial Court does not suffer from legal infirmity.

9. The next ground is regarding maintainability of suit for want of notice under section 487 of the MMC Act, it is well settled that such notice is required if the action of the corporation is taken in accordance with provisions of the Act. If it is the case of the plaintiff that action of defendant Nos.1 and 2 is not in accordance with provisions of the Act, this Court at the stage of considering application under Order 7 Rule 11 of the CPC is not entitled to scrutinize the averments in the context of its truth or false. Hence, the Trial Court has rightly rejected the application under Order 7 Rule 11 of the CPC. The revision applications has no merits.

10. The revision applications are, therefore, dismissed. No costs.

11. However, considering the question involved, the Trial Court is directed to decide suit within one year from today.

12. It will be open for the Trial Court to frame issue regarding maintainability and jurisdiction of the Civil Court in the context of pleading raised by the parties.

(AMIT BORKAR, J.)