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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11096 OF 2023

Mukesh Harilal Rathod & Ors ...Petitioners

Versus

Kalyan Dombivali Municipal Corporation & Anr ...Respondents

Mr Harshad A Sathe, *for the Petitioner.*

None, *for the Respondent.*

**CORAM G.S. Patel &
 Kamal Khata, JJ.**

DATED: 13th September 2023

PC:-

1. This matter has been mentioned repeatedly and we have each time insisted that proper notice must be given to the Respondents including Respondent No. 3, one Narendra Pathak, added by amendment on 4th September 2023. There were previous attempts to mention the matter and have it taken up without sufficient notice. We are now told that notice has been given and that parties have been served but we find that this is very recent and that the authorities of the Kalyan Dombivali Municipal Corporation (“KDMC”) viz. Respondents Nos. 1 and 2 were not given notice until this morning.

2. That aspect apart, we are quite unable to understand how such a Writ Petition which from paragraphs 3 to 13 is almost entirely based on private disputes between the Petitioners and Respondent

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No. 3 can lie in a Writ Court with seriously disputed questions of fact. These disputes are not even recent. The 3rd Respondent and the Petitioners and their family members had, even according to these Petitioners, an agreement of 21st February 2011. There was a dispute in regard to performance of reciprocal obligations or at least the performance by the 3rd Respondent of his obligations under that agreement. The 3rd Respondent filed an application under Section 11 of the Arbitration & Conciliation Act, 1996 before this Court and a retired Judge of this Court was appointed as a sole arbitrator. Those proceedings have continued with statements of claim and reply to the claim being filed. There is an assertion that the arbitration proceedings have lapsed for want of extension of time but no further particulars are provided. In paragraph 4 itself there is an assertion unsupported by any material that in the arbitration proceedings the 3rd Respondent made a statement that he had entered into similar agreements with the Petitioner's relatives. Other allegations of a similar type are made against the 3rd Respondent in paragraph 4.

3. Paragraph 5 then sets out the history of the property in question which is at Agra Road, Kalyan. There were partition suits. There were two different City Survey Nos. There were mutations. There is a recital that the 3rd Respondent bought an adjacent property from the heirs of one of the person parties in the partition suit. Then there is a reference in paragraph 6 to a notice under Section 265A of the Maharashtra Municipal Corporation Act, 1949 ("**MMC Act**") on 17th November 2022 regarding the adjacent property. Paragraph 7 raises a dispute about the appointment of a structural engineer by the 3rd Respondent and there is an allegation

in paragraph 8 of this engineer allegedly “trespassing” on the Petitioner’s property. The Petitioners seem to have made a complaint in that regard. On 28th January 2023, the Petitioners apparently approached a structural auditor empanelled with the KDMC. He is said to have made a report on 13th February 2023 saying that the building is safe for human habitation but requires some corrective repairs. There is no explanation of what has happened between February 2023 and 3rd July 2023 when the Petitioners came upon a notice apparently addressed to the 3rd Respondent and issued by the Respondent Corporation under Section 268 of the MMC Act. The Petitioners say that they have replied to this notice dated 4th July 2023 by a representation dated 11th July 2023. On 18th July 2023, the Municipal Corporation issued a notice directing the Petitioners to have a survey and an audit conducted by either VJTI or IIT. There is no explanation as to what has happened after that. Then on 19th July 2023, the Petitioners have sought permission for repair works and then demanded a withdrawal of the previous notices of 4th July 2023 and 18th August 2023.

4. The only allegation is that after 4th August 2023 when the Petitioners wrote to the KDMC that they were initiating structural changes, there is now in September 2023, a sudden surprise visit by the officers of Respondent Nos 1 and 2 and MSEB, and a disconnection of an electricity supply meter with the threat of demolition of the subject property.

5. We do not see any notice of demolition that is annexed to the Petition. There is only a statement that there is a forcible disconnection of electricity supply. Neither of these statements is credible, because no such disconnections or demolitions are ever contemplated in law without sufficient advance notice.

6. Further, the apprehension does not seem to be justified, because in the Petition, said to have been moved in great urgency on 4th September 2023, the statement was that there would be disconnection and demolition on that day. Admittedly, no such thing has happened till date.

7. We fail to understand why in all this the Petitioners have not found the time or the inclination to move a Civil Court which undoubtedly would have jurisdiction. We are quite unable to see how in these circumstances we can be expected to exercise our writ jurisdiction. Quite literally, we are asked to do so on the mere say so of the Petitioners.

8. We are unable to grant relief. The Petition is rejected.

9. The Petitioners are at liberty to adopt appropriate civil proceedings in a jurisdictionally competent Court. Those proceedings will be decided on merits uninfluenced by any observations in this order.

(Kamal Khata, J)

(G. S. Patel, J)