

Prajakta Vartak

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15268 OF 2022

Dashrath Nandkumar Shinde

.Petitioner

Vs.

MCGM & Ors.

.Respondents

Mr. Karl Tamboly with Mr. Manoj Singh and Mr. Puneet Shukla i/b. M/s. MKS Legal Associates for Petitioner.

Mr. R. Y. Sirsikar for Respondent No.1/MCGM.

Mr. Sanjiv Sawant with Mr. Abhishek Matkar, Mr. Mukesh Gupta and Mr. Malhar Bageshwar i/b. Solicis Lex for Respondent No.3.

Mr. Pramod Bramhankar, Asst. Engineer (B & F) R/S Ward present.

CORAM : G. S. KULKARNI &
R. N. LADDHA, JJ.

DATE : APRIL 18, 2023

P.C.:

1. This petition has been filed praying for the following reliefs:-

“a. That this Hon’ble Court be pleased to admit the present petition;

b. That this Hon’ble Court be pleased to issue a Writ of Mandamus or any other order, writ or direction in the nature of Mandamus directing the Respondent no.1-MCGM and Respondent no.3-society to produce all the relevant documents, papers and proceedings before this Hon’ble Court related to repair permissions, notices, structural audit report or any other documents required by this Hon’ble Court in respect of 6 buildings situated at Majithia Nagar CHS Ltd., CTS No. 444/A, Village-Malad (North), Opp. Roop Nagar, S.V. Road, Kandivali (West), Mumbai, Maharashtra – 400 067;

c. That this Hon’ble Court be pleased to issue a Writ of Mandamus or any other order, writ or direction in the nature of Mandamus directing the Respondent no.1-MCGM to take necessary steps for evacuation or demolition or major repairs of the 6 buildings

situated at Majithia Nagar CHS Ltd., CTS No. 444/A, Village-Malad (North), Opp. Roop Nagar, S.V. Road, Kandivali (West), Mumbai, Maharashtra – 400 067, to safeguard the life of the innocent society member/human being as per law;

d. That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other order, writ or direction in the nature of Mandamus to the Respondent No.1-MCGM to depute some proper and fit persons and/or some person be independently appointed by this Hon'ble Court as this Hon'ble Court may deem fit and proper under whose observation the entire process of evacuation, demolition and/or repair of the buildings be completed within time bound manner and he shall directly report the compliance to this Hon'ble Court;

e. That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other order, writ or direction in the nature of Mandamus with a direction to Respondent No.2-Deputy Registrar to take the charge of the business affairs of Respondent No.3-society till the evacuation, demolition and/or repair of the buildings shall not be completed as per directions of this Hon'ble Court.

f. That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other order, writ or direction in the nature of Mandamus that all the resolutions, decisions passed by the Respondent No.3 except the major repairs of the society buildings be stayed by this Hon'ble Court.

g. That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other order, writ or direction in the nature of Mandamus directing to the Respondent No.1 to initiate action/s against the erring officers of Respondent no.1 who failed to take any action to safeguard the life of innocent persons despite of completion of time for repair by the society as per structure audit report dated 02/09/2022 and submit a report before this Hon'ble Court;

h. for interim and/or ad-interim reliefs in terms of prayer clause (b), (c), (d), (e) and (f) above be granted."

2. We have heard learned counsel for the parties.

3. Mr. Sawant, learned counsel for respondent no.3 has drawn our attention to the resolution dated 9 / 13 April, 2023 being a resolution passed by the society appointing developers-Keystone Realtors Limited

(Rustomjee) to undertake redevelopment of the society's building. Copy of the said resolution is taken on record, it is also part of the compilation as tendered by Mr. Tamboly, learned counsel for the petitioner.

4. Under such resolution, it is resolved by the society that the redevelopment would be undertaken. The grievance of the petitioner stands substantially redressed. In these circumstances, we are of the opinion that the present petition would not warrant any further adjudication. As requested by Mr. Tamboly, we permit the petitioner to withdraw the petition keeping open all contentions of the petitioner, if any against the society.

5. At this stage, Mr. Tamboly's instructions are that the petitioner would support the redevelopment.

6. It is clarified that we have not precluded the municipal corporation from taking appropriate steps as permissible in law as already a notice under Section 353B of the Mumbai Municipal Corporation Act has been issued. All contentions in that regard are expressly kept open.

7. Disposed of. No costs.

[R. N. LADDHA, J.]

[G. S. KULKARNI, J.]

Corrected as per the order of speaking to minutes dated 20 April, 2023.