

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1852 OF 2023

Basil Shamrao Rath ... Petitioner

V/s.

The Municipal Corporation of Greater ... Respondents
Mumbai and Anr.

Mr. Rath Joyce'sham for petitioner.

Mr. Sanskar Marathe for respondent no. 3.

Ms. Kunal Waghmare for BMC.

**CORAM : SUNIL B. SHUKRE &
RAJESH S. PATIL, J.J.**

DATE : 21st JULY 2023.

PC. :

We have heard this matter for some time. Learned counsel for the Corporation has invited our attention to the order passed on 24th/25th August, 2020 in Writ Petition (L) No. 973 of 2020 filed by the petitioner. He submits that the grievance raised in this petition is one and similar as the grievance raised in the said petition, and therefore, this petition is not maintainable. He also submits that this Court, in the said order dated 24th/25th August, 2020 has categorically noted that the grievance of the petitioner was already heard and

decided by the Co-operative Court and therefore, there will be no question of this Court passing a similar order and on this ground, the co-ordinate bench of this Court refused to look into the grievance again raised before this Court.

2. Now if we consider the averments made in the petition along with the prayer clause, we find that the grievance of the petitioner is that the building known as Ganesh Bhavan “B”, Jai Ganesh Co-operative Society Limited, is rendered dilapidated by the deliberate acts of commission and omission of officers of the Corporation and that is the reason why the petitioner, vide prayer clause (b) has sought directions of this Court to the Corporation, and not to the Co-operative Housing Society, to carry out repairs to and renovation in the building at Ganesh Bhavan, “B”, Jai Ganesh Co-operative Housing Society Limited, 343, Senapati Bapat Marg, Mahim, West, Mumbai.

3. Learned counsel for the respondent no. 3, Jai Ganesh Co-operative Housing Society Limited, however, agrees with the submission made on behalf of the Corporation that this petition is not maintainable.

4. Learned counsel for the petitioner would submit that there

is a statutory duty imposed upon the Commissioner of Corporation under section 353 (B) (6) of the Mumbai Municipal Corporation Act to carry out corrective repairs within the period specified in the notice, which is required to be given by the Corporation to the owner or occupier of the building. She submits that it is this duty, which has not been performed by the Commissioner of Mumbai Municipal Corporation.

5. Learned counsel for the petitioner further submits that in terms of sections 491 and 492 of the Mumbai Municipal Corporation Act, there is already a provision made for recovery of the expenses incurred for performance of duty under the Act. She submits that when these sections are read along with the provisions in section 353 (B) 6, one would find that the duty that is imposed upon the Commissioner of Corporation is mandatory and it must be performed by him.

6. While it is true that there is a provision made under section 353 (B) (6) of the Mumbai Municipal Corporation Act that the Commissioner may, after giving the owner or occupier, a notice in writing require him to carry out within the period specified in the notice, corrective repairs for securing structural stability of a building and if the owner or occupier fails to carry out such corrective repairs

within the period specified in the notice, the Commissioner may carry out that repairs and the expenses incurred by the Commissioner on such repairs shall be recovered from the owner or the occupier as arrears of property tax.

7. However, it must be noted that what has been provided for in sub section (6) of section 353 (B) is basically in the nature of the power of the Commissioner to carry out corrective repairs and that too, when there is a threat to structural stability of the building. This power is required to be exercised by the Commissioner with a view to protecting the building, which is under threat because of danger to its structural stability. It means that there has to be first determination regarding some issue about structural stability of the building and without that determination, such power cannot be exercised by the Commissioner. At this stage, learned counsel for the respondent no.3 Society has drawn our attention to the order passed below Exhibit-1 in Criminal complaint no. 4100007/SW/2019 by Court of Metropolitan Magistrate, 41st Court, Shindewadi Dadar, Mumbai on 13th August 2019 wherein, the learned Magistrate has recorded a finding that insofar as Ganesh Bhavan, “B” building is concerned, only repairing of room no.4/B was necessary and that it has not been stated anywhere

that entire building as well as room no.4/B is in a ruinous condition, or likely to fall or in any way dangerous as required by section 354 of the Act. This finding of the Court of Metropolitan Magistrate has attained finality as it has not been challenged anywhere. It indicates that even power under sub section (6) of Section 354 (B) could not have been exercised by the Commissioner of Corporation this case, even if he had wished to do so, there being no real threat to structural stability of the building.

8. Once it is found that the material available on record does not indicate anywhere that there is real or reasonable threat to structural stability of the building, the issue about carrying out the repairs to the building would be restricted to the private parties and that issue has already been adequately dealt with by the competent Court as noted by co-ordinate bench of this Court in its order dated 24th/25th August, 2020 rendered in Writ Petition (L) No. 973 of 2020 and in that very order, the co-ordinate bench of this Court has also found that the petitioner herein has already taken out execution proceedings, which till date are pending. The execution proceedings as informed by learned counsel for the respondent no.3 being Execution Proceedings No. 2 of 2020, are still pending and therefore it would be

appropriate for the petitioner to approach the Execution Court for redressal of his grievance. Learned counsel for the petitioner submits that the Execution Court is not passing necessary orders and therefore, the petitioner's grievance has remained as it is. We are of the view that if the petitioner takes some steps in the case pending before the competent Court in a rigorous manner, his grievance raised in this petition, which is also the grievance before the competent Court would be redressed effectively.

9. In this view of the matter we find that the petition is not maintainable and thus stands dismissed.

(RAJESH S. PATIL, J)

(SUNIL B. SHUKRE, J)