

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 806 OF 2023

Riyad Rashid Oomerbhoy ...Petitioner
Versus
Executive Engineer & Ors. ...Respondents

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Mr. Jamshed Master i/b Purazar Fouzdar, Advocate for the Petitioner.

Mr. P. G. Lad a/w Ms. Sayali Apte, Advocate for Respondent
No.1/MHADA.

Ms. Pooja Yadav, Advocate for MCGM.

Mr. S.D. Mulye, Advocate for Respondent Nos.3 & 4.

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

DATE : March 13, 2023

P.C.

1. Not on board, upon mentioning taken on board, on a praciepe as moved on behalf of the Petitioner.

2. Head Mr. Master learned counsel for the petitioner, Mr. Lad learned counsel for the respondent No.1 MHADA, Ms. Pooja Yadav learned counsel for the respondent No.2-MCGM/Executive Engineer, Mr. S. D. Muley learned counsel for respondent Nos. 3 & 4.

3. It is informed by Mr. Master that respondent Nos.5 & 6 are served and affidavit of service would be placed on record within one week from today. Statement of Mr. Master is accepted. The

only substantive prayer as made in the petition is prayer clause (a) which reads thus:

“a. This Hon’ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other Writ directing Respondent No.1 and 2 to take cognizance of the representations made by the Petitioner and demolish the illegal structures;”

4. The case of the petitioner is of some illegal construction is undertaken by respondent No.4 on the fourth floor. Learned counsel for the respondent Nos.3 & 4 has disputed the contention as urged on behalf of the petitioner that the entire construction as alleged by the petitioner is unauthorized and illegal. According to them it can be seen from the documents which are in possession of respondent Nos. 3 & 4 that the construction is not unauthorized.

5. Thus, there are rival contentions on such issues. In these circumstances considering the substantive prayer as made in the petition, we are of the opinion that as two authorities are involved namely the Executive Engineer of the MHADA (Respondent No.1.) and Executive Engineer of the Municipal Corporation of Greater Mumbai, (Respondent No.2.) it is appropriate that both the said officers form a panel which would consider the representation made by the petitioner and after giving full opportunity to the

parties to submit their respective documents and raise their contentions after granting an opportunity of a personal hearing to the parties decide the representation by passing a speaking order.

6. All contentions of the parties in that regard are expressly kept open.

7. The representation of the petitioner be decided within a period of four weeks from today.

8. In the meantime, Mr. Master has drawn our attention to the letter dated 2 March 2023 issued by respondent No.1 in regard to the repairs, water proofing which are required to be undertaken. In our opinion, it is in the interest of all the parties that water proofing work is carried out as expeditiously as possible. Accordingly, we permit that such works to be undertaken and completed, as informed to the petitioner by the communication of MHADA dated 2 March 2023. This also considering the fact that consequential repairs and water proofing works are essential for the building itself.

9. The petition is accordingly disposed of in the above terms.
No costs.

[R. N. LADDHA, J.]

(G. S. KULKARNI, J.)