

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 532 OF 2024

Veena Dewan & Anr ...Petitioners
Versus
Legal Department, Municipal Corporation of ...Respondents
Greater Mumbai & Ors

Ms Veena Dewen, Petitioner No 1-in-person, present.
Mr Kunal Waghmare, for the Respondent-MCGM.
Mr Prathamesh Bhargude, for Respondent No 4.

CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 14th March 2024

PC:-

1. Heard. The prayer clauses in the Writ Petition (a), (b) and (c) read as follows:

“(a) this Hon’ble Court be pleased to issue Writ of Mandamus or any other appropriate order and direction directing the Respondents Nos. 1 to 3 and its officers to forthwith take action, within the time prescribed by this Hon’ble Court, upon the Petitioners’ complaint to the Respondent Nos 1 to 3, about the illegal and unauthorised construction made inside the various flats of the said building viz. Dewan Niketan Premises Co-op. Society Ltd. Plot No.204, CTS No.422, Chembur Naka, V.N. Purav Marg, Opp. Fire Brigade, Mumbai 400 071, in violation of

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section 342 and 347 of the Mumbai Municipal Corporation Act 1888.

(b) this Hon'ble Court be pleased to issue Writ of Mandamus or any other appropriate order and direction directing the Respondents Nos. 1 to 3 and its officers to forthwith take action against the Respondent No 4, within the time prescribed by this Hon'ble Court, upon the complaints of the Petitioners to the Respondent No 3 for failure of the Respondent No 4 to conduct and complete the work of Structural Audit of the said building viz. Dewan Niketan Premises Co-op. Society Ltd. Plot No.204, CTS No.422, Chembur Naka, V.N. Purav Marg, Opp. Fire Brigade, Mumbai 400 071 as per the notices issued by the Respondent Nos 1 to 3 to the Respondent No 4 u/s 353B of the Mumbai Municipal Corporation Act 1888,

(c) this Hon'ble Court be pleased to pass appropriate order and direction directing the Respondents Nos. 1 to 3 to take appropriate action against the Respondent NO.4 to ensure that the structural repairs of the said building viz Dewan Niketan Premises Co-op. Society Ltd. Plot No.204, CTS No.422, Chembur Naka, V.N. Purav Marg, Opp. Fire Brigade, Mumbai 400 071 including the structural repairs of Office No 6 belonging to the Petitioners in the above building are caused to be carried out and completed alongwith submission of the Structural Stability Certificate by the Respondent No.4 within the time prescribed by this Hon'ble Court.”

2. The 1st Petitioner appears in person. The two Petitioners are members of the 4th Respondent society. They have rights to an Office No 6 of about 100 sq ft on the ground floor of the 4th Respondent society which is at Chembur Naka, VN Purav Marg, opposite Fire Brigade, Mumbai 400 071. The essence of the

complaint here spread over very many pages is that there are various illegalities in other premises in the society building and there are transgressions of requirements under the Mumbai Municipal Corporation Act, 1888 (“**MCGM Act**”), including an allegation that a mandatory Structural Stability Certificate has not been furnished. There is a reference from paragraph 4 onwards to civil suits filed as long ago as 2015. Then in paragraph 5 there is a mention of structural consultants’ reports and an allegation that repairs were not conducted. The specific allegation in paragraph 11 is that there is no Structural Stability Certificate obtained.

3. The needlessly repetitive Petition then alleges dishonesty and manipulation by the 4th Respondent society and its failure to carry out the necessary structural repairs.

4. Obviously, in a Writ Petition addressed to a public law remedy, we will not look first to the 4th Respondent society for a response. We look instead to the Municipal Corporation of Greater Mumbai (“**MCGM**”), the Planning Authority. Mr Waghmare states that a draft Affidavit has been finalised. It will be affirmed tomorrow, 15th March 2024. A copy will be served. His present instructions, however, are to say first that the Structural Stability Certificate has indeed been furnished and the MCGM has no grievance with the 4th Respondent society in that regard. As to the question of what the Petitioner describes as “various illegal and unauthorised constructions made inside various flats”, Mr Waghmare states that a site inspection was carried out in June 2022 and there was no

material found to indicate that there were any illegalities or unauthorised works being carried out.

5. The Petitioners may say otherwise. There are several difficulties in the Petitioners' way. *First*, our writ jurisdiction cannot be converted into what is essentially a fishing expedition to find some material. *Second*, it would *prima facie* appear that there are other disputes between the society and the Petitioners, and the Petition is perhaps or at least arguably, as Mr Bhargude says, a side-wind. *Third*, what Mr Waghmare tells us now raises very seriously disputed questions of fact.

6. It is not only impossible but entirely impermissible for the Writ Court to enter into these controversies that pertain to factual issues. For instance, if the Petitioners maintain that there are indeed illegalities, then they will have to make a pleading about the specific nature of that illegality, then one of them must step into the witness box, give evidence of that and be prepared to be cross-examined in that regard. The same will also apply in regard to her allegations about a Structural Stability Certificate.

7. The 1st Petitioner in person does not perhaps realise the peril of insisting on a determination by the Writ Court. It would inevitably result in the Petitioners not being able to agitate these questions in an appropriate civil proceeding.

8. It is for this reason that beyond noting the rival submissions, and noting that there are disputed questions of fact, we are not

deciding any of the points in controversy ourselves. We simply leave it open to the Petitioners to adopt an appropriate civil proceeding in this regard to establish whatever the Petitioners contend or allege. The rejection of the present Writ Petition will not come in the way of a determination of that civil proceeding. All contentions on all sides are expressly kept open.

9. The Petition is disposed of in these terms. There will be no order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)