

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6108 OF 2025

SANTOSH
SUBHASH
KULKARNI

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Date: 2025.05.16
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Kohozema Haiderali Tonkwala through
Dawoodi Bohara Jamat Boriwali ...Petitioner

Versus

Assistant Commissioner/Central Ward and
anr. ...Respondents

Mr. Sudhanva Bedekar, through VC, i/b Mohammed Najmi,
for the Petitioner.

Mr. Santosh Mali, for the Respondent - BMC.

CORAM: N. J. JAMADAR, J.

DATED: 9th MAY, 2025

PC:-

1. Heard the learned Counsel for the parties.
2. On 6th May, 2025, when the matter was listed before this Court, the Court had passed the following order:

“4. Learned counsel for the petitioner invites attention to the Court to a Division Bench judgment of this Court in the case of *Abdul Karim Ahmed Mansoori Vs. Municipal Corporation of Greater Mumbai and Anr.*¹, wherein, it was observed that the Division Bench judgment in the case of *Abdul Razzaq Sunesra vs Municipal Corporation of Greater Mumbai and Ors.*², in which the constitutional validity of Section 515-A, has been upheld, does not hold that ouster of the Civil Court’s jurisdiction is so complete that a Civil Suit cannot be taken on file or the plaint cannot be registered at all. Even in the recent decision in the case of *Asif Fazal Khan Vs. The Municipal Corporation of Greater dated 17th April 2025*, in Para No. 33.1 and 33.2, the Division Bench had adverted to the enquiry expected of the Civil Court when a

1 (2013) SCC Online Bom 1218.

2 (2013) SCC Online Bom 832.

suit is instituted challenging the notices issued by the Municipal Corporation.

5. Thus, the question as to whether the learned Judge, City Civil Court could have refused to register the plaint and examine the tenability of the suit after considering the averments in the plaint, arises for consideration.”

3. Mr. Mali, the learned Counsel for the Municipal Corporation, fairly submits that the learned Judge, City Civil Court, ought to have allowed the registration of the suit and, thereafter, considered the bar to suit under the provisions of Section 515-A of the Mumbai Municipal Corporation Act, 1888.

4. The aforesaid course is in consonance with the decision of the Division Bench of this Court in the case of ***Abdul Karim Ahmed Mansoori***. Hence, without delving into the merits of the matter, the petition stands allowed and the impugned order refusing registration of the suit stands quashed and set aside. The suit be registered, if otherwise in order, and listed before the learned Judge, City Civil Court at Dindoshi for hearing on ad-interim reliefs.

5. To facilitate the petitioner - plaintiff to move the learned Judge, City Civil Court, for ad-interim relief, the ad-interim relief granted by this Court on 6th May, 2025 shall continue to operate for a period of three weeks from today.

6. All concerned shall act on an authenticated copy of this order.

[N. J. JAMADAR, J.]