

NON-REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO. 3798 OF 2017**

(Arising out of SLP (c) No.1999 of 2017)

Rufina D' souza & Ors.

.....Appellants

Versus

Municipal Corporation of Greater
Mumbai and Ors.

.....Respondents

**A.M.KHANWILKAR, J.**

1. This appeal arises from the judgment and order dated 13th January 2017 passed by the Division Bench of the High Court of Judicature at Bombay in Writ Petition (L) No. 2644 of 2016. By the said order, the High Court summarily dismissed the writ petition preferred by the appellants.

2. There is a chequered history of proceedings between the appellants and the private respondents. For the nature of order that we propose to pass, it may not be necessary to advert to all those facts and proceedings.

3. The aforementioned writ petition was filed for the following reliefs:

- “a) That this Hon’ble Court be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari or any other writ or order under Article 226 of the Constitution of India quashing the Impugned Notices dated 18th November 2014 bearing No.ACN/1014/2/B&F/Gen issued by the 2nd Respondent declaring J.D. House under C-1 Category;*
- b) That this Hon’ble Court be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari or any other writ or order under Article 226 of the Constitution of India quashing the Impugned Notice dated 9th August, 2016 bearing No.ACN/347/Gen/B&F issued by the 2nd Respondent for disconnecting the electricity and water connection of J.D. House situated at C.T.S. No.244 to 247 of Village Ghatkopar-Kirol, Near Jamma Mazid, Chirag Nagar Road, Off L.B.S. Road, Ghatkopar (W), Mumbai 400086;*
- c) That this Hon’ble Court be pleased to restrain the Respondents, either by themselves or through their agents or servants, by a permanent order of injunction from taking any steps pursuant to or in execution of the Impugned Notice dated 9th August 2016 bearing ACN/347/Gen/B&F issued by the 2nd Respondent in respect of J.D. House situated at C.T.S. No.244 to 247 of*

Village Ghatkopar-Kirol, Near Jamma Mazid, Chirag Nagar Road, Off L.B.S. Road, Ghatkopar (W), Mumbai 400086;

- d) *That pending the hearing and final disposal of the present Writ Petition, this Hon'ble Court be pleased to direct the 2nd Respondent to restore the water connection and electricity for all the premises of J.D. House situated at C.T.S. No.244 to 247 of Village Ghatkopar – Kirol, Near Jamma Mazid, Chirag Nagar Road, Off L.B.S. Road, Ghatkopar (W), Mumbai 400086;*
- e) *That pending the hearing and final disposal of the present Suit, this Hon'ble Court be pleased to stay the effect and operation of the Impugned Notice dated 9th August, 2016 bearing No.ACN/347/Gen/B&F issued by the 2nd Respondent;*
- f) *That pending the hearing and final disposal of the present Suit, this Hon'ble Court be pleased to refrain the Respondents, either by themselves or through their agents or servants, by a temporary order of injunction from taking any further steps pursuant to or in execution of the Impugned Notice dated 9th August, 2016 bearing No. CAN/347/Gen/B&F issued by the 2nd Respondent;*
- g) *For ad-interim and interim reliefs in terms of prayer clause (d) (e) and (f) above;*
- h) *For costs;*
- i) *For such further and other reliefs as the nature and circumstances of the present case may require.”*

4. On a plain reading of these reliefs, it is evident that the appellants were essentially challenging the action initiated by the Corporation under Section 354 of the Mumbai Municipal

Corporation Act, 1888; and the notice for disconnecting the electricity and water connection in respect of the building in which the appellants were occupying tenements therein. The Division Bench of the High Court, however, summarily dismissed the petition in the following terms:

“It is informed that in connection with the subject property, Civil Suits for specific performance challenging the action of the Corporation for demolition of the building are being contested. During the course of hearing, we have noticed that parties are not at present agreeing for agreement to be entered into by them. Certain issues are raised which required some inquiry to be conducted. The disputed questions cannot be gone into in the present proceedings. The parties may get the same settled in the Civil proceedings which are pending, in the alternate forums.

2. In this view of the matter, no interference is warranted. Keeping all issues on merits open, Writ Petition is disposed of. Status-quo be continued for a period of one week from today.

3. The other issues concerning water and electric supply can also be raised in the pending civil proceedings.”

5. On a fair reading of the impugned order passed by the High Court, it is obvious that the High Court has not even touched upon the core issues raised by the appellants concerning the challenge to the impugned notices dated 18th November 2014 and 9th August 2016. The High Court may be right in observing that

disputed questions need not be gone into in writ proceedings, but that does not preclude the writ petitioners from challenging the show cause notices issued by the statutory authority on permissible grounds. It is open to the Court to consider the challenge on the touchstone and parameters delineated for judicial review of such action. The fact that a suit for specific performance was pending between the private parties and they were unable to strike any settlement, cannot be a tangible reason to decline to examine the grounds of challenge put forth by the writ petitioners in relation to the impugned notices.

6. Suffice it to observe that the High Court ought to have examined the grounds of challenge and the reliefs claimed by the appellants in the writ petition concerning the action initiated by the statutory authority. That challenge will have to be examined, uninfluenced by the pendency of the suit for specific performance between the private parties.

7. Accordingly, we allow this appeal and set aside the impugned decision of the High Court with a further order to remand the writ petition to be heard and decided by the Division Bench of the High Court afresh. All questions are left open. We

make it clear that we have not expressed any opinion on any of the grounds and contentions available to the respective parties.

8. The appeal is allowed and the impugned judgment and order passed by the Division Bench of the High Court is set aside. Instead, the writ petition is remanded and restored to the file of the High Court to its original number, to be heard by the Division Bench *de novo*.

9. The interim relief granted by this court during the pendency of this appeal to continue till an appropriate order is passed by the High Court either in the main proceedings or on prayer for grant of interim relief, after hearing the parties. We request the High Court to take up the writ petition expeditiously, considering the subject matter of the impugned notices issued by the corporation for demolition of the building being in dilapidated condition.

10. The parties to appear before the appropriate bench of the High Court on 23rd March 2017.

11. The appeal is disposed of in the above terms with no order as to costs.

.....J.
(Dipak Misra)

.....J.
(A.M. Khanwilkar)

.....J.
(Mohan M. Shantanagoudar)

New Delhi,
Dated: March 9, 2017



JUDGMENT