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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.829 OF 2013

M/s Sion Kamgar Cooperative Housing Society Ltd. ..Petitioner

-Versus-

Municipal Corporation for Greater Mumbai
and others.

..Respondents

.....
Mr.Harish R. Pawar, for the Petitioner.

Mr.A.Y.Sakhare, Senior Advocate a/w Mr.Clive D'Souza, i/by Ashok
Satpute, for the Respondent Nos.2 and 3.

Ms.Trupti H. Puranik, for the Respondent/BMC.

.....
**CORAM: S.C. DHARMADHIKARI
AND
G.S. PATEL, JJ.**

DATE :- 15th October, 2013

PC:

1 The Petitioner is complaining that the Municipal Corporation has not taken any action in respect of the Nursing Home/ Hospital which is set up by the Respondent Nos.2 and 3, known as Atharva Hospital and Research Centre, Sion Kamgar Cooperative Housing Society, Saiprasad Building, 101, 1st Floor, Opposite Chroma Showroom, Plot No.126, Sion (East), Mumbai-400022.

2 It is common ground that the Petitioner is a cooperative housing society and claims that pursuant to the Lease dated 19.10.1956 a right was created in its favour in respect of Plot No.126, Scheme No.6 by the Municipal Corporation for a period of 999 years. The intent was to provide residential units to the members of the Petitioner/ Society (Lessee). There are four buildings constructed which are styled as Wings A, B, C and D through the Builder appointed by the Petitioner.

3 Later on, there appears to be a dispute between the office bearers of the Petitioner Society then holding the charge and the

Developer. There was also dispute between one Mr.Prabhakar Parte and the then Managing Committee of the Petitioner Society. It is alleged that the terms and conditions in the Lease Deed have been violated by the earlier Managing Committee and the development activity is carried out. What is now alleged is that there are Wings E and F constructed on the said plot. That plot belongs to the Petitioner Society, but these wings were not part of the construction envisaged. In these circumstances the disputes between the Petitioner, members of the Petitioner, Developers or third party, apart, the construction of wings E and F is termed as unauthorized and illegal. The Petitioner has pointed out that the Builders and Developers have constructed the building known as Sai Prasad in violation of the terms and conditions of the Lease Deed and also stop work notice dated 03.03.2011 and demolition notice dated 18.03.2011. The construction is, therefore, patently unauthorized and illegal. Any activity such as setting up the nursing home in one of the flats, cannot be protected and therefore, requisite steps be taken so as to stop such illegal activities.

4 The Municipal Corporation has filed an affidavit in answer to this Writ Petition and what we find is that there is complete silence maintained with regard to the construction of Wings E and F and whether they are unauthorized as claimed. What has been pointed out and possibly as justification is that the Respondent Nos.2 and 3 were allowed to set up the Nursing Home on the first floor because they had all requisite licences and no objection certificates. Equally, they gave an undertaking to the Municipal Corporation, so also, executed the Indemnity Bond that the Occupation Certificate will be submitted as and when received.

5 Upon a query, Ms.Puranik, on earlier occasion sought time to take instructions.

6 Today, Ms.Puranik, on instructions, has made a statement that

not just this Nursing Home and activity carried out by the Respondent Nos.2 and 3, but, the entire wings or building styled as Wings E and F on the plot of land leased to the Petitioner Society, has no occupation certificate. There are 49 persons/ occupants who have occupied the structure known as Wings E and F. If that is the position, then, Ms.Puranik states that the Municipal Corporation will initiate all steps and measures so as to proceed against the occupants and equally the building which has been occupied by these occupants. The requisite notices will be issued within a period of one week from today.

7 We accept these statements made as undertakings given to this Court.

8 As far as the Respondent Nos.2 and 3 are concerned, we need not advert to their stand in the affidavit. They may have some justification for entering in the property and possibly that they were completely unaware of the disputes between the Developers and the Petitioner. However, occupying the building without occupation certificate and commencing the activity styled as Nursing Home, cannot be countenanced and permitted in law. They will have to be proceeded against by the Municipal Corporation and it is thereafter, open to them to initiate such measures and adopt such proceedings against the Petitioners or Municipal Corporation if they are aggrieved by any of their acts. We need not foreclose their remedies.

9 We clarify that recording of the statements made by Ms.Puranik on instructions, shall not be construed as any opinion being expressed by this Court on the rival contentions. They are kept open.

10 In the light of the statements made by Ms.Puranik, the Writ Petition need not be kept pending and it is disposed of. No costs.

(G.S.PATEL, J.)

(S.C. DHARMADHIKARI, J.)