SUPREME COURT OF INDIA

Makarand Dattatreya Sugavkar

Vs.

Municipal Corporation of Greater Mumbai & ors.

C.A. No. 4821 of2013

(G.S. Singhvi and S.J.Mukhopadhaya JJ.)

01.07.2013

JUDGMENT

G.S. SINGHVI, J.

1. Leave granted.

2. This appeal is directed against order dated 22.3.2011 passed by the Division Bench of the Bombay High Court in Writ Petition No.187/2011 whereby the appellant's prayer for issue of a mandamus to the Commissioner, Mumbai Municipal Corporation (respondent No.2) to get the damaged portion of his flat repaired was rejected but he was given liberty to secure execution of the order passed by the Maharashtra State Cooperative Appellate Court, Mumbai (hereinafter referred to as, 'the Cooperative Appellate Court').

3. The appellant is a member of respondent No.3-Shree Sainiketan Cooperative Housing Society Ltd. He was allotted Flat No.001 in the building constructed by respondent No.3 at Borivali (West), Mumbai. Respondent No.3 claims to have carried out major repairs in 2005-06 and all its members except the appellant contributed towards the expenses. The appellant disputed his liability to pay the expenses incurred by respondent No.3 and raised a dispute under the Maharashtra Cooperative Societies Act, 1960. It is not clear from the record as to what was the fate of the original dispute filed by the appellant before the Cooperative Court IV, Mumbai, but this much is evident that the matter was carried to the Cooperative Appellate Court in Revision Application No.73/2007.

4. On 9.12.2007, a portion of the roof of the flat allotted to the appellant collapsed and his mother is said to have suffered injuries. The appellant's brother, who is an Advocate, made a complaint to the officers of the Municipal Corporation of Greater Mumbai (for short, 'the Corporation'). Thereupon, Assistant Engineer (Buildings and Factories), North Ward directed the concerned Junior Engineer to inspect the flat. The latter inspected the premises on 10.12.2007 and reported that a portion of the roof had collapsed. Thereafter, notice dated

12.12.2007 was issued to the Chairman/Secretary of respondent No.3 under Section 354 of the Mumbai Municipal Corporation Act, 1888 (for short, 'the 1888 Act') and they were directed to carry out repairs in the flat within a period of two months. It was also mentioned in the notice that if the needful is 2 Page 3 not done then prosecution may be launched under Section 475-A and repairs may be carried out under Section 489 and the cost recovered in accordance with Section 491.

5. In the meanwhile, M/s. Parlekar and Dallas, Architects were directed by the Court to visit the flat and submit a report about its status as also the estimate of cost/expenses of repair works required to be carried out. The Architects inspected the flat and submitted report showing the damage to the flat but did not give an estimate of the cost of repairs.

6. After submission of the report by the Architects, the appellant filed Miscellaneous Application No.1/2008 and made the following prayers:

> "1. Respondent society be directed to pay fees of the Architect and other relevant incidental fees/ expenses. 2. To bear the cost of the leave and license compensation for such period starting from the date of start of leave and license agreement by applicant till the date of suit flat declared safe for resuming residing in it, by the expert structural engineers and or architects and all other necessary incidental expenses of leave and license agreement and its registration and others. The above expenses should include such expenses that may be required to be incurred on change and /or extension of leave and license agreements."

7. The Cooperative Appellate Court took cognizance of the correspondence between the appellant and the officers of the Corporation on the one hand and the officers of the Corporation and respondent No.3 on the other and the notices issued by the Competent Authority under Section 354 of the 1888 Act and 3 Page 4 observed:

> "As far as the first part is concerned, to pay the fees of the architect, it is to be noted that it was the applicant who had applied for appointment of an architect and at his instance M/s. Parelkar & Dallas from the panel of architects of the Hon'ble High Court had been appointed. They have submitted their report but appear that because of their fees not being paid and inspite of sending reminders, the appellant has failed to pay the fees of the architect till today. Since it was the appellant himself who had prayed for appointment of an architect, it is the moral and legal responsibility of the applicant himself to pay the amount. Hence, therefore as far as the question of payment of fees of architect is concerned, the same to be paid by the applicant. Now coming to the second part of the relief prayed for as stated in the report any work of repairs to be carried out the same to be done through experienced civil Contractor under the advice of registered Structural Engineer and under the supervision of a site supervisor, duly registered with the MMC. In view of the nature of the repairs it is necessary that a competent/experienced person is required to carry out the repairs so that no further damage is caused while carrying out the repairs to the flat. Further the

repairs are required to be carried out in a planned manner. Hence therefore it is necessary that a Structural Engineer/Contractor be appointed for that purpose to carry out the work of repairs in the applicants flat. Further point which is to be noted is that during the course of carrying out the repairs it may become necessary to obtain permission from statutory authorities to carry out the work, otherwise there may be a possibility of stop work notice or other notice being issued by the statutory Authorities. If such notice is issued then obviously the repairs work which is required to be carried out will come to a halt and there fore it is necessary that all permission if any requited from statutory authorities for carrying out the work to be obtained by the contractor expeditiously. Since the issues in the dispute are yet to be decided, by this order passed the dispute is also to be decided as expeditiously as possible. 4 Page 5 The exact details of the repairs of the suit flat and its expenses etc. do not find place in the reports nor in the Misc. Application. However, in that respect the applicant can pay the expenses etc. and the same may be recovered from the respondents subject to the outcome of the dispute. Thus, therefore, today for the purpose of deciding this Misc. Application No.1/2008 what is borne in mind are the two reports. Unfortunately, the Structural Audit Report does not mention anything about the details of observation of the inside of the suit flat since the person concerned had not been permitted to enter into the suit flat and looking to report it does appear that repairs are essential to the suit flat to prevent any further mishap."

After making the aforesaid observations, the Cooperative Appellate Court passed order dated 21.2.2008, the operative portion of which reads as under:

"1. Structural Engineer / Contractor to be appointed to carry out the work of repairs of the applicants flat as per the report of M/s Parelkar & Dallas, since no exact details of repairs are mentioned in the MA NO.l/2008 or in the structural auditors reports.

2. All permissions, if any, required form statutory authorities for carrying out the work to be obtained by the contractor expeditiously.

3. As prayed in revision application, costs of repairs etc. to be borne by the applicant and recoverable form the respondents, subject to the outcome of the dispute. The dispute to be expedited and to be disposed of as expeditiously as possible.

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5. Revision application no.73/2007 is reassigned to Ld. Member Smt. Pawar for hearing on 3/3/2008 since Ld. Member is attending camp at Pune Bench from 25/2/2008 to 29/2/2008."

8. In October-November, 2008 Executive Engineer (Special Zone VII) inspected the appellant's flat and submitted a separate report showing the extent of damage. Thereafter, Assistant Commissioner, R/North Ward sent letter dated 22.12.2008 to the appellant and

asked him to seek approval of the Commissioner under Section 499 of the 1888 Act for executing the work with a stipulation that once the approval is granted, he may deduct the expenses from the rent/maintenance charges.

9. In 2009, the appellant along with his Advocate met the officers of the Corporation to apprise them about further deterioration in the condition of the flat and the constant threat under which his family was living. On 10.9.2009, Deputy Municipal Commissioner (Zone-VII) and Assistant Engineer visited the flat and found that its condition had worsened.

10. On 5.2.2010, the Assistant Engineer issued another notice under Section 354 to the Chairman/Secretary of respondent No.3 requiring it to carry out the structural repairs to the east side of the columns of the society building at the ground, first, second and third floors and the damaged portions in flat Nos.001 and 002. That notice contained stipulations similar to those specified in notice dated 12.12.2007.

11. In response to the second notice, respondent No.3 sent reply dated 5.4.2010 mentioning that the appellant was not allowing inspection of the flat by its Structural Auditor to facilitate the repairs. Thereupon, the Assistant 6 Page 7 Commissioner sent letter dated 22.4.2010 to the appellant and asked him to remain present in the joint meeting arranged in his Chamber on 28.4.2010. However, instead of attending the meeting, the appellant filed Writ Petition No.187 of 2011 for issue of a mandamus to respondent No.2 to invoke Section 489 of the 1888 Act and get the flat repaired at the cost of respondent No.3. The appellant pleaded that respondent No.2 was bound to take necessary steps in terms of Section 489 because respondent No.3 had failed to comply with the notices issued under Section 354 of the 1888 Act.

12. In the counter affidavit filed by respondent No.3 through its Honorary Secretary, Shri Kishore Vedac, the following averments were made:

(i) Respondent No.3 carried out major repairs in the building in 2005-06 and all the members except the appellant had paid their respective contribution.

(ii) When the appellant was asked to pay Rs.1, 23,936/- towards his share of the expenses, he filed a dispute before the Cooperative Court.

(iii) During the pendency of the dispute, the appellant filed Miscellaneous Application No.1/2008, which was finally disposed of by the President of the Cooperative Appellate Court vide order dated 21.2.2008 and certain directions were given for repair of the flat.

(iv) The directions given by the Cooperative Appellate Court could not be implemented because the appellant did not allow inspection of the flat.

(v) After disposal of the earlier application, the appellant filed Interim Application No. _____/09 with the prayer that respondent No.3 be directed to carry out the repairs in terms of the report of M/s. Parelkar & Dallas and the same is pending.

13. The Division Bench of the High Court took cognizance of the orders passed by the Cooperative Appellate Court and disposed of the writ petition by recording the following observations:

> "Having heard the Ld. counsel for the parties we are unable to accept the petitioner's contention that for the structural repairs to be carried out in the petitioner's flat the Municipal commissioner should be directed to spend from the public funds and thereafter, to recover the same from the Respondent no.3 society. We do not find any such provision in section 489 or 499 of the Act which would justify this court to direct the Municipal Commissioner to spend for repairs in a private flat from out of the public funds. At the highest the petitioner is entitled to carry out repairs in his flat and to recover the same from the respondent no.3 society as per the decisions of the co-operative appellate court. We, therefore, leave it open to the petitioner to approach the Co-operative Court which will allow the petitioner to withdraw the amount of approximate Rs.40,000/- deposited during the pendency of the proceedings before the Cooperative Court. The Petitioner will also be at liberty to carry out repairs in his flat and recover the amount from respondent no.3 society by taking out appropriate execution proceedings for execution of the orders of the Cooperative Appellate Court. If the petitioner moves the Cooperative Court with an application for withdrawal of the aforesaid amount, the Cooperative Court shall pass appropriate order so as to enable the petitioner to withdraw the amount within one week from the date of filing the application."

14. Shri Ram Jethmalani, learned senior counsel appearing for the appellant, argued that the impugned order is legally unsustainable and is liable to be set aside because the High Court failed to notice the mandate of Section 489 which 8 Page 9 imposes a duty on respondent No.2 to ensure that in the event of non-compliance of the notice issued under Section 354, the repairs are carried out at the cost of respondent No.3. Shri Jethmalani referred to Section 3(gg) of the 1888 Act to show that the definition of the word 'premises' is comprehensive enough to include public as well as private buildings and argued that respondent No.2 was duty bound to take steps for repair of the damaged portion of the flat because despite two notices issued under Section 354, respondent No.3 failed to undertake the required repairs. Learned senior counsel submitted that even though use of the word 'may' in Section 489(1) suggests that it is only an enabling provision, this Court should interpret the same as mandatory else Section 354 will become otiose.

15. Shri Pallav Shihsodia, learned senior counsel appearing for the Corporation, argued that Section 489(1) is not couched in mandatory form and respondent No.2 is not obliged to take steps for repair of the damaged portion of the building or structure merely because the owner has failed to take steps in terms of the notice issued under Section 354. Shri Shishodia further

argued that the plain language of Section 489 does not admit the interpretation placed by Shri Jethmalani because the Legislature has deliberately used the expression 'the Commissioner may.....'. He submitted that if the language of Section 489 is construed as casting a duty on the Commissioner to take measures for execution of the notices issued under Section 354 and other sections enumerated in subsection (2) of Section 489, then it will become impossible for him to perform his 9 Page 10 duties under various other provisions of the Act. Shri Shihsodia also pointed out that in terms of Section 499, the appellant could have obtained approval of the Commissioner for repair of the flat and recovered the cost from respondent No.3 by making appropriate deduction towards the rent and maintenance charges. Learned senior counsel invited our attention to letter dated 22.10.2008 sent by the Assistant Commissioner to the appellant requiring him to seek approval of the Commissioner for the execution of works in terms of Section 499 and argued that the appellant cannot take advantage of his own failure to seek necessary approval from the Competent Authority.

16. Shri Shivaji M. Jadhav, learned counsel appearing for respondent No.3, supported the impugned order and submitted that in view of the directions given by the Cooperative Appellate Court, the appellant can recover the cost of repairs from respondent No.3 subject to final adjudication of the dispute.

17. We have considered the respective arguments and carefully perused the record. Sections 3(gg), 354, 489,490, 491 and 499 of the 1888 Act, which have bearing on the decision of the issue involved in this appeal read as under:

> "3(gg). "Premises" includes messages, buildings and lands of any tenure, whether open or enclosed, whether built on or not and whether public or private.
>
> **354. Removal of structures, etc., which are in ruins or likely to fall.**
>
> (1) If it shall at any time appear to the Commissioner that any structure (including under this expression any building, wall or other structure and anything affixed to or projecting from, any building, wall or other structure) is in a ruinous condition, or 10 Page 11 likely to fall, or in any way dangerous to any person occupying, resorting to or passing by such structure or any other structure or place in the neighbourhood thereof, the Commissioner may, by written notice, require the owner or occupier of such structure to pull down, secure or repair such structure, subject to the provisions of section 342 and to prevent all cause of danger therefrom.
>
> (2) The Commissioner may also if he thinks fit, require the said owner or occupier, by the said notice, either forthwith or before proceeding to pull down, secure or repair the said structure, to set up a proper and sufficient hoard or fence for the protection of passersby and other persons, with a convenient platform and handrail, if there be room enough for the same and the Commissioner shall think the same desirable, to serve as a footway for passengers outside of such hoard or fence.

489. Works, etc. which any person is required to execute may in certain cases be executed by the Commissioner at such person's cost.

(1) When any requisition or order is made, by written notice by the Commissioner or by any municipal officer empowered under section 68 in this behalf, under any section, subsection or clauses of this Act mentioned in sub-section (2), a reasonable period shall be prescribed in such notice for carrying such requisition or order into effect, and if, within the period so prescribed, such requisition or order or any portion of such requisition or order is not complied with the Commissioner may take such measures or cause such work to be executed or such thing to be done as shall, in his opinion be necessary for giving due effect to the requisition or order so made; and, unless it is in this Act otherwise expressly provided, the expenses thereof shall be paid by the person or by any one of the persons to whom such requisition or order was addressed.

(2) The sections, sub-sections and clauses of this Act referred to in sub-section (1) are the following, namely:—

Section 230, sub-section (5)
Section 231.
Section 232.
Section 233, clause (b).
Section 233A, clause (b)
Section 243, sub-section (2)
Section 248, sub-section (1)
Section 249A
Section 257
Section 271, sub-section (2)
Section 272, sub-section (5)
Section 274, sub-sections (1) and (1A)
Section 274A, sub-sections (1) and (2)
Section 278
Section 353.
Section 354.
Section 363, sub-sections (1) (2), (3) and (4).
Section 375.
Section 375A.
Section 376.
Section 377.
Section 377A.
Section 305
Section 308, sub-section (2)
Section 309, sub-section (1)
Section 311
Section 315
Section 325
Section 326, sub-section (3)
Section 327, sub-section (1), clause (d)
Section 328, sub-section (3).
Section 328A, sub-section (3)
Section 329, sub-section (1)
Section 334, sub-section (1).
Section 338, sub-section (2)
Section 352.
Section 380.
Section 381
Section 381A, sub-section (2).
Section 382.
Section 383, sub-section (1).
Section 392, sub-section (1).
Section 405.
Section 425, sub-section (1).

(3) The Commissioner may take any measure, execute any work or cause anything to be done under this section, whether or not the person who has failed to comply with the requisition or order is liable to punishment or has been prosecuted or sentenced to any punishment for such failure.

490. Recovery of expenses of removals by the Commissioner under sections 314, 315, 354 and 380.

(1) The expenses incurred by the Commissioner in effecting any removal under section 314 or sub-section (3) of section 322 or subsection (2) or (3) of section 354A or, in the event of a written notice issued under sub-section (1) of section 315 or section 354 or 380 not being complied with under section 489, shall be recoverable by sale of the materials removed, and if the proceeds of such sale do not suffice, the balance shall be paid by the owner of the said materials.

(2) But, if the expenses of removal are in any case paid before the materials are sold, the Commissioner shall restore the materials to the owner thereof, on his claiming the same at any time before they are sold or otherwise disposed of, and on his paying all other expenses, if any, incurred by the Commissioner in respect thereof or in respect of the intended sale or disposal thereof.

(3) If the materials are not claimed by the owner thereof, they shall be sold by auction or otherwise disposed of as the Commissioner thinks fit if perishable forthwith, and if other than perishable, as soon as conveniently may be after one month from the date of their removal, whether the expenses of the removal have in the meantime been paid or not and the proceeds, if any, of the sale or other disposal, shall, after defraying there from the costs of the sale or other disposal, and, if necessary, of the removal, be paid to the credit of the municipal fund, and shall be the property of the corporation.

(4) Notwithstanding anything contained in this Act, when the removal of anything is effected under section 314, the Commissioner may direct that the owner thereof shall, in addition to the expenses incurred in effecting the removal of the thing, pay by way of penalty such sum not exceeding ten thousand rupees as the Commissioner may specify, and such sum if not paid, shall be recoverable in the same manner in which the expenses incurred in effecting the removal of the thing are recoverable.

491. Expenses recoverable under this Act to be payable on demand; and if not paid on demand may be recovered as an arrear of property tax.

(1) Whenever under this Act, or any regulation or by-law made under this Act, the expenses of any work executed or of any measure taken or thing done by or under the order of the Commissioner or the General Manager or of any municipal officer empowered under section 68 in this behalf are payable by any person, the same shall be payable on demand. (2) If not paid on demand the said expenses shall be

recoverable by the Commissioner or the General Manager subject to the provisions of sub-section (2) of section 503, by distress and sale of the goods and chattles of the defaulter, as if the amount thereof were a property tax due by the said defaulter.

499. In default of owner, the occupier of any premises may execute required work recover expenses from the owner.

(1) Whenever, the owner of any building or land fails to execute any work which he is required to execute under this Act or under any regulation or bye-law made under this Act, the occupier, if any, of such building or land shall be entitled to execute such work in the manner set out in sub-section (2).

(2) The occupier or occupiers interested in such work may seek the approval of the Commissioner for executing such work. The Commissioner shall grant the approval unless other measures are taken by him to execute the said work. While granting the approval the Commissioner shall specify the nature of the work. Upon such approval being granted, the occupiers shall be entitled to execute the said work and the expenses incurred for such work shall for all purposes be binding on the owner. The occupiers shall also be entitled to deduct amount of expenses incurred for such work from the rent which from time to time becomes due by them to the owner or otherwise recover such amount from them:

Provided that, where such work is jointly executed by the occupiers the amount to be deducted or recovered by each occupier shall bear the same proportion as the rent payable by him in respect of his premises bears to the total amount of the expenses incurred for such work :

Provided further that, the total amount so deducted or recoverable shall not exceed the amount of expenses incurred for such work.

18. An analysis of the above reproduced provisions makes it clear that the term

"premises" includes public as well private messuages, buildings and lands. Section 354 (1) provides for issuance of notice to the owner or occupier of any structure to pull down the same or secure or repair such structure, subject to the provisions of Section 342 and to prevent every possible cause of danger therefrom. Section 354(2) empowers the Commissioner to issue direction for urgent implementation of the notice for pulling down of the structure or repair of the same. Section 489(1) deals with a situation in which the person to whom a notice is issued either under Section 354 or any other section enumerated in Section 489(2) has failed to comply with the same. In such an eventuality, the Commissioner is empowered to take such measures or cause such works to be executed or such things to be done which, in his opinion, may be necessary for giving effect to the requisition or order made under the particular section. This section also lays down that unless otherwise provided in the 1888 Act, the expenses of such work etc. shall be paid by the person to whom such

requisition or order was addressed. Section 489 (3) empowers the Commissioner to take any measure, execute any work or cause anything to be done under that section irrespective of the fact that the wrongdoer is liable to be punished or has been prosecuted or sentenced to any punishment. Section 490(1) provides for recovery of expenses incurred by the Commissioner in effecting any removal under Section 314 or 322(3) or 354A(2) or (3). This section lays down that in the event the written notice issued under Section 315(1) or 354 or 380 is not complied with under Section 489, then the expenses shall be recoverable by sale of the materials removed. Section 490(2) and (3) contain provisions ancillary to Section 490(1). Section 491 lays down that expenses of any work executed or of any measure taken or thing done by or under the order of the Commissioner etc. shall be payable on demand. If the demand is not satisfied, proceedings can be taken against the defaulter for recovery by distress and sale of goods and chattels. Section 499(1) is an enabling provision. It empowers the occupier of any building or land to execute the work which the owner of any building or land has failed to execute in accordance with the provisions of the Act or regulation or bye-laws made thereunder. Section 499(2) lays down that before executing the work referred to in Section 499(1), the occupier or occupiers of the building or land, as the case may be, may seek approval of the Commissioner, who, in turn, has to grant such approval unless he has taken other measures for execution of such work. Once the approval is granted, the occupier is entitled to execute the work and deduct the expenses incurred for such work from the rent payable to the owner.

19. A careful reading of Sections 354 and 489 shows that if the Commissioner is satisfied that any structure is in a ruinous condition or likely to fall or in any way dangerous to any person occupying, resorting to or passing by such structure or any structure or place in the neighborhood thereof, then he can require the 15 Page 16 owner or occupier of such structure to pull down, secure or repair the same and to prevent cause of danger therefrom. The word ‘structure’ used in sub-section (1) of Section 354 includes any building, wall and other structure and anything fixed to or projecting from any building, wall or other structure. Under Section 354(2), the Commissioner can direct the owner or occupier to take steps enumerated in Section 354(1) on emergency basis. If the owner or occupier fails to take steps in terms of Section 354(1) or (2), then the Commissioner can suo motu take such measures or cause such works to be executed. In that event the expenses incurred in the taking of appropriate measures and/or execution of work are required to be paid by the person or by any one of the persons to whom the requisition or order issued under Section 354 was addressed. The other sections mentioned in Section 489(2), which relate to amenities like drains, water closets, privies, urinals, private water supply, leveling and draining of private streets, prohibition of projection upon streets, removal of any structure or fixture erected or set up before the enforcement of Section 312, provision of passage or diversion of traffic and for securing access to the premises approached from the street, drainage, water supply etc., provision for parking, naming of streets etc., alteration in the location of gas pipes etc., submission of plans and other documents for erection of building and supply of other information, inspection and sanitary regulation of premises, regulation of private market buildings and slaughter houses, disinfection of buildings etc. empower the Commissioner to take various steps for ensuring erection of buildings in accordance with the sanctioned plans, laying of 16 Page 17 streets,

drainage, sanitation etc. In appropriate cases, the Commissioner can issue directions for maintaining proper drainage, sanitation, cleanliness etc. and take punitive measures for violation of such directions.

20. Although, most of the above mentioned provisions are intended to benefit the public at large, some of them are also meant for the benefit of private individuals. The primary object underlying Section 354 is to safeguard the public from the danger of being forced to live in a structure, which includes any building, wall or other structure and which is in a ruinous condition or is likely to fall or is in any way dangerous to any person occupying the same. This section is also intended to protect those who may pass by such structure. A reading of the plain language of Section 489 gives an impression that it is only an enabling provision but if the same is read keeping in view the purpose of its enactment and the setting in which it is placed, it becomes clear that the Commissioner is duty bound to ensure that the written notice given to the owner or occupier under Section 354(1) is implemented in its letter and spirit. The duty cast upon the Commissioner is in the nature of a public law obligation and in appropriate case, the Court can issue direction for its enforcement. In this connection, we may usefully quote the following passage from 'Principles of Statutory Interpretation' by Justice G.P. Singh (12th Edition, 2010 - page 389):

> "As approved by the Supreme Court: "The question as to whether a statute is mandatory of directory depends upon the intent of the Legislature and not upon the language in which the 17 Page 18 intent is clothed. The meaning and intention of the legislation must govern, and these are to be ascertained not only from the phraseology of the provision, but also by considering its nature, its design and the consequences which would follow from construing it the one way or the other" "For ascertaining the real intention of the Legislature", points out Subbarao, J, "the court may consider inter alia, the nature and design of the statute, and the consequences which would follow from construing it the one way or the other; the impact of the other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances, namely, that the statute provides for a contingency of the noncompliance with the provisions; the fact that the noncompliance with the provisions is or is not visited by some penalty; the serious or the trivial consequences, that flow there from; and above all, whether the object of the legislation will be defeated or furthered". If object of the enactment will be defeated by holding the same directory, it will be construed as mandatory, whereas if by holding it mandatory, serious general inconvenience will be created to innocent persons without very much furthering the object of enactment, the same will be construed as directory. But all this does not mean that the language used is to be ignored, but only that the prima facie inference of the intention of the Legislature arising from the words used may be displaced by considering the nature of the enactment, its design and the consequences flowing from alternative construction. Thus, the use of the words 'as nearly as may be' in contrast to the words 'at least' will prima facie indicate a directory requirement, negative words a mandatory requirement 'may' a directory requirement and 'shall' a mandatory requirement.""

In Bachahan Devi v. Nagar Nigam, Gorakhpur (2008) 12 SCC 372, this Court observed:

> "It is well-settled that the use of word `may' in a statutory provision would not by itself show that the provision is directory in nature. In some cases, the legislature may use the word `may' as a matter of pure conventional courtesy and yet intend a mandatory force. In order, therefore, to interpret the legal import of the word `may', the court has to consider various factors, namely, the object and the scheme of the Act, the context and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word, and the like. It is equally well-settled that where the word `may' involves a discretion coupled with an obligation or where it confers a positive benefit to a general class of subjects in a utility Act, or where the court advances a remedy and suppresses the mischief, or where giving the words directory significance would defeat the very object of the Act, the word `may' should be interpreted to convey a mandatory force. As a general rule, the word `may' is permissive and operative to confer discretion and especially so, where it is used in juxtaposition to the word 'shall', which ordinarily is imperative as it imposes a duty. Cases however, are not wanting where the words `may' `shall', and `must' are used interchangeably. In order to find out whether these words are being used in a directory or in a mandatory sense, the intent of the legislature should be looked into along with the pertinent circumstances. The distinction of mandatory compliance or directory effect of the language depends upon the language couched in the statute under consideration and its object, purpose and effect. The distinction reflected in the use of the word `shall' or `may' depends on conferment of power. Depending upon the context, 'may' does not always mean may. 'May' is a must for enabling compliance of provision but there are cases in which, for various reasons, as soon as a person who is within the statute is entrusted with the power, it becomes his duty to exercise that power. Where the language of statute creates a duty, the special remedy is prescribed for nonperformance of the duty."

In Dhampur Sugar Mills Ltd. v. State of U.P. (2007) 8 SCC 338, this Court quoted with approval the following observations of Earl Cairns, L.J. in Julius v. Lord Bishop of Oxford (1880) 5 AC 214:

> "(W)here a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the Legislature of the conditions upon which they 19 Page 20 are entitled to call for its exercise, that power ought to be exercised, and the Court will require it to be exercised."

21. In view of the above discussion, we may have set aside the impugned order and issued a mandamus to respondent No.2 to ensure execution of the notices issued under Section 354(1) but there are two impediments in adopting that course. Firstly, the appellant could have availed of the remedy under Section 499 by making an application to the Commissioner for

grant of approval to execute the work which respondent No.3 is alleged to have failed to execute in terms of the notices issued under Section 354. At one stage, the Assistant Commissioner had sent letter dated 22.8.2012 to the appellant asking him to seek approval of the Commissioner but for reasons best known to him, the appellant did not respond. The second impediment is order dated 21.2.2008 passed by the Cooperative Appellant Court. It is not in dispute that the appellant had raised a dispute under the Maharashtra Cooperative Societies Act questioning the demand raised by respondent No.3 in lieu of the repairs carried out in 2005-2006. It is also not in dispute that during the pendency of the revision petition before the Cooperative Appellate Court, the appellant had filed Miscellaneous Application No.1/2008, which was disposed of by the concerned Court by detailed order dated 21.2.2008. There is a lot of controversy between the appellant and respondent No.3 on the issue of implementation of the directions given by the Cooperative Appellate Court. While the appellant has blamed respondent No.3 for not taking steps to repair the flat in terms of direction Nos. 1 and 2, the latter has accused the appellant of non-cooperation by stating that he persistently refused to allow inspection by the Structural Auditor. However, we are not concerned with this controversy and are of the considered view that once the appellant succeeded in persuading the Cooperative Appellate Court to issue direction for repair of the flat in question, he had no locus to file the writ petition under Article 226 of the Constitution. In any case, instead of filing a petition under Article 226 of the Cosntitution, the appellant should have taken steps for effective execution of the order passed by the Cooperative Appellate Court. He could also have, by taking advantage of letter dated 22.12.2008 sent by the Assistant Commissioner, sought approval of the Commissioner under Section 499(2) for executing the work relating to repairs and deducted the cost from the rent/maintenance charges.

22. In view of the above discussion, we hold that the Division Bench of the High Court did not commit any error by relegating the appellant to the remedy of seeking execution of the directions contained in order dated 21.2.2008 passed by the Cooperative Appellate Court.

23. The appeal is accordingly dismissed leaving it open for the appellant to secure execution of order dated 21.2.2008 passed by the Cooperative Appellate Court.