

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4698 OF 2013

Ramswarup Girdharilal Khandelwal & Ors. ..Petitioners

Vs.

Pimpri Chinchwad Municipal Corporation & Ors. ..Respondents

**Mr. M. S. Karnik i/b Mr. Drupad Patil and Mr. Pavan Patil for the
Petitioners**

Mr. Deepak More for the Respondent Nos.1 and 2

Mr. Siddharth Ronghe for the Respondent Nos.3 and 4

CORAM : R. M. SAVANT, J.
DATE : 9th JANUARY, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 22-2-2013 passed by the Lower Appellate Court i.e. the Learned District Judge-5, Pune, in Misc Civil Appeal No.207 of 2010. By the said order, the said Misc Civil Appeal No.207 of 2010 filed by the Respondent No.1 herein came to be allowed and resultantly the injunction which was granted by the Trial Court i.e. the Learned Civil Judge Junior Division(PCMC) Court, Akurdi, came to be set aside.

2 The Petitioners herein are the original Plaintiffs and are the
tenants/occupants of the building / structure in question which is within the

jurisdiction of the Respondent No.1 Municipal Corporation. The Suit in question being Regular Civil Suit No.96 of 2010 has been filed by them challenging the notices dated 13-8-2009 and 19-12-2009 issued by the Respondent No.1 under Section 264(1) of the Maharashtra Municipal Corporations Act, declaring the building / structure as being in a dilapidated condition. As indicated above, the application for temporary injunction Exhibit 5 filed by the Plaintiffs in the said Suit, came to be allowed by order dated 22-4-2010 and the Defendants were restrained by an order of temporary injunction from demolishing / dismantling or removing the structure or any part thereof.

3 The said order came to be challenged by the Respondent No.1 by filing the said Misc Civil Appeal No.207 of 2010. The Lower Appellate Court deemed it appropriate to interfere with the order passed by the Trial Court and accordingly set aside the order dated 22-4-2010 and thereby rejected the application Exhibit 5 for temporary injunction.

4 It is against the said order dated 22-4-2010 that the above Writ Petition came to be filed. The above Writ Petition was moved for admission on 15-5-2013 before the Learned Vacation Judge. On the said date an order direction the parties to maintain status-quo came to be passed. The said order of status-quo was clarified by a Learned Single Judge of this Court thereafter

on 9-7-2013 by observing that the status-quo would operate only in respect of dispossession from the premises in question as a tenant and is not be construed as permitting the Petitioners to carry on business activities. Thereafter, the matter once again came up before a Learned Single Judge of this Court (R. P. Sondurbaldota, J.) on 24-6-2014, the Learned Judge adverted to the fact that the building / structure of the Petitioners being required to be demolished on account of the widening of the Akurdi Road as per the sanctioned development plan, as a consequence of which the building / structure known as Kalbhor building being abutting the road to the extent of 2 mtrs. was demolished by the PCMC to the extent of it falling within the road line. The Learned Judge also made observations as regards the conduct of the officers of the PCMC who accordingly to the Learned Judge were unnecessarily driving the Petitioners from pillar to post to obtain permission for repairs. The Learned Judge has therefore lastly observed in the order that the permission for repairs which was sought by the Petitioners would be scrutinized and the PCMC would render every help possible to the Petitioners for grant of repair permission. It seems that pursuant to the said directions issued on 24-6-2014, the Respondent No.1 has processed the proposal for repair permission.

5 The Learned Counsel for the Respondent No.1 Mr. D. R. More, informs this court that the repair permission has in fact now been granted and tenders the repair permission dated 22-8-2014 addressed to the Petitioners.

The Learned Counsel appearing for the Petitioners does not dispute the said position. In view of the said repair permission granted, the position has now changed as the Petitioners who are the tenants / occupants would be entitled to carry out repairs in terms of the said repair permission. The Learned Counsel for the Petitioners Mr. Karnik states that the repair permission has not been given effect to by the Petitioners in view of the fact that the above Petition is pending in this Court and that there is an order of status-quo which is operating. The Learned Counsel however states that the Petitioners would take steps to carry out repairs in terms of the said repair permission and apply for appropriate completion certificate from the Respondent No.1.

6 In view of the repair permission granted, the fact situation has changed as the Petitioners would now be entitled to repair the building which has been found to be in a dilapidated condition and on account of which a notice had been issued by the Respondent No.1. The Petitioners would therefore have to be given an opportunity to carry out the repairs in terms of the permission granted. The Learned Counsel appearing on behalf of the Petitioners states that the Petitioners would carry out the repair work expeditiously and would commence the same within 4 weeks from date, as the same entails the appointment of the contractor etc. In view of the permission granted and the willingness of the Petitioners who are the tenants / occupants to carry out repairs, the cause for issuing notice under Section 264 of the

Mumbai Municipal Corporation Act, would not survive and would have to be suspended till such time as the repairs are carried out by the Petitioners in terms of the repair permission. In view thereof, in fact the Suit itself has turned infructuous, however, the same would have to be kept for passing of an order to that effect for a later day, for the present at least the cause for moving the application Exhibit 5 and consequential cause for filing the Appeal have been over taken by the subsequent event of the repair permission being granted. On the said basis, the orders passed by the Trial Court as well as the Lower Appellate Court in view of the repair permission would lose their efficacy. The challenge in the above Petition has therefore turned infructuous. The Petition to stand disposed of on the said ground.

7 The Respondent No.1 PCMC would inspect the repaired building / structure and after considering the structural stability would take a decision as regards the grant of completion certificate or otherwise. It is directed that the Petitioners would also carry out repairs expeditiously and not later than 6 months of its commencement. The PCMC would thereafter take a decision and the Petitioners would apply for completion certificate immediately thereafter and even if not applied, the PCMC would take a decision in respect of the stability of the structure within a maximum period of two months thereafter. The repairs to be commenced after notice has been given to the landlord. It is clarified that the repairs would undoubtedly have to be in consonance with

the repair permission. It is further clarified that the Petitioners would not be entitled to occupy the repaired part of the structure in question unless so certified by the PCMC.

8 The parties to act upon an ordinary copy of this order duly authenticated by the Court Shirestedar.

[R.M.SAVANT, J]