

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

***WRIT PETITION NO. 6351 OF 2014
ALONG WITH
WRIT PETITION NO. 6355 OF 2014***

Mr. Vency Correa

... Petitioner in both
petitions.

v/s

Mira Bhayander Municipal Corpn. & anr. ... Respondents

Mr.S.M. Oka i/by Sagar Joshi for the petitioner in both petitions.

Mr.M.S. Lagu for respondent Nos.1 and 2 in both petitions.

Mr.S.B. Shetye i/by Kapil Shetye for Resp. Nos.3 to 32 in both
petitions.

***CORAM: SMT. VASANTI A. NAIK &
SHRI C. V. BHADANG, JJ.***

DATED : 3RD FEBRUARY 2015

PC.:

Heard.

The issue involved in both the petitions is connected and since similar facts give rise to the same, they are heard together and are decided by this common order.

The petitioner claims to be the owner of the building known as Babu Mistry Chawl, situated at Station Road, Bhayandar (West),

Dist. Thane. Relying on the report of the Structural Engineer, the respondent Corporation had issued notices to the petitioner under Section 264 (1), (2) and (3) and under Section 268 (1), (4), (5) and (6) of Mumbai Municipal Corporation Act. Another notice was issued by the respondents immediately thereafter for carrying out the repairs of the building. Being aggrieved by the said orders, the petitioner filed Writ Petition No.7127 of 2013. So also, the tenants in the said building also filed Writ Petition No.7593 of 2013 against the order dated 3rd June, 2013. Both these writ petitions were heard by this Court and decided by the common judgment dated 13th February 2014. Both the notices were quashed and set aside. This Court directed the Commissioner of the Corporation to look into the entire material including the report of AT & TS Associates in relation to the structural status and stability of the building. After the writ petition was decided, the Commissioner, by the impugned order dated 26th May 2014 allowed the application filed by the respondents. Also, by an order impugned in the Writ Petition No.6355 of 2014 dated 2nd June, 2014 on an application made by the tenant, the Executive Engineer of the Corporation granted permission for repairs.

Inter-alia it is submitted on behalf of the petitioner that the impugned order of the Commissioner dated 26th May 2014 is liable to be set aside as the Commissioner has failed to consider the report of AT & TS Associates though this Court had clearly directed the Commissioner to decide on the basis of the said report where

an action under Section 264 of the Act was required. It is stated that though a reference to the report of AT & TS Associates is made in the impugned order, the said report is not considered by the Commissioner and instead the report of Shri Rajesh Mhatre was considered. It is submitted that the Commissioner has not followed the directions issued by this Court in the judgment dated 13th February 2014 while passing the impugned order.

On the other hand, it is submitted on behalf of the respondents that there is a reference to the order of AT & TS Associates in the impugned order of the Commissioner. It is stated that, it is apparent from the report of AT & TS Associates that the permission for repairs was necessary. It is however submitted on behalf of the respondents that if this Court is inclined to quash the order of the Commissioner on the ground that the report of the AT & TS Associates was not considered, a direction may be issued to the Commissioner to decide the matter afresh within a time frame.

On a perusal of the impugned order dated 26th May 2014, it appears that the Commissioner has not considered the report of AT & TS Associates despite the direction of this Court to do so. This Court had, by the judgment dated 13th February 2014 clearly directed the Commissioner to look into the material including the report of AT & TS Associates for considering the structural status and stability of the building. However, it appears from the impugned order that the Commissioner did not consider the report of AT & TS Associates and instead considered the report of

Mr. Rajesh Mhatre while allowing the application filed by the respondents/tenants. Since the Commissioner has not followed the clear direction issued by this Court while passing the impugned order, the impugned order is liable to be set aside.

Hence, for the reasons aforesaid, the writ petitions are partly allowed. The impugned order dated 26th May 2014 is quashed and set aside. So also, the consequential order dated 2nd June, 2014 is also quashed and set aside. The Commissioner is directed to decide the application afresh in accordance with law including the directions issued by this Court by the judgment dated 13th February 2014, after granting an opportunity of hearing to the parties. The Commissioner is directed to decide the matter as early as possible and positively within a period of two months from the date of appearance of the parties. The parties undertake to appear on 2nd March, 2015 so that the notice to the parties could be dispensed with. No order as to costs.

(C. V. BHADANG, J.)

(VASANTI A. NAIK, J.)