

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER NO. 312 OF 2014****ALONGWITH****CIVIL APPLICATION NO. 361 OF 2014****IN****APPEAL FROM ORDER NO. 312 OF 2014****ALONGWITH****APPEAL FROM ORDER NO. 414 OF 2014****ALONGWITH****CIVIL APPLICATION NO. 468 OF 2014****IN****APPEAL FROM ORDER NO. 414 OF 2014****Jagtar Singh H. Kaunsal & Anr.****..... Appellants****VERSUS****Municipal Corporation of Greater Mumbai & Ors. Respondents****ALONGWITH****APPEAL FROM ORDER NO. 307 OF 2014****ALONGWITH****CIVIL APPLICATION NO. 357 OF 2014****IN****APPEAL FROM ORDER NO. 307 OF 2014****Jagtar Singh H. Kaunsal****..... Appellant****VERSUS****Municipal Corporation of Greater Mumbai****..... Respondent****ALONGWITH****APPEAL FROM ORDER NO. 308 OF 2014****ALONGWITH****CIVIL APPLICATION NO. 358 OF 2014****IN****APPEAL FROM ORDER NO. 308 OF 2014****ALONGWITH**

**APPEAL FROM ORDER NO. 309 OF 2014
ALONGWITH
CIVIL APPLICATION NO. 359 OF 2014
IN
APPEAL FROM ORDER NO. 309 OF 2014**

Autarsingh H. Kaunsal Appellant

VERSUS

Municipal Corporation of Greater Mumbai Respondent

**ALONGWITH
APPEAL FROM ORDER NO. 310 OF 2014
ALONGWITH
CIVIL APPLICATION NO. 360 OF 2014
IN
APPEAL FROM ORDER NO. 310 OF 2014**

Mahendra J.Pathak Appellant

VERSUS

Municipal Corporation of Greater Mumbai Respondent

**ALONGWITH
APPEAL FROM ORDER NO. 688 OF 2015
ALONGWITH
CIVIL APPLICATION NO. 841 OF 2015
IN
APPEAL FROM ORDER NO. 688 OF 2015**

Rameshkumar Patel Appellant

VERSUS

Municipal Corporation of Greater Mumbai Respondent

**ALONGWITH
APPEAL FROM ORDER NO. 690 OF 2015
ALONGWITH
CIVIL APPLICATION NO. 843 OF 2015
IN
APPEAL FROM ORDER NO. 690 OF 2015**

Sudhir S. Patel Appellant

VERSUS

Municipal Corporation of Greater Mumbai**..... Respondent**

Mr.A.Y.Sakhare, Senior Advocate, i/b. Mr.Sanjeev R.Singh for the Appellants.

Mr.A.V.Diwate for the Respondent no.1/B.M.C.

Ms.Deepti Panda, i/b. Mr.Kainaz Irani for Respondent no.7 in Appeal from Order No.312 of 2014.

Mr.H.S.S.Shreepad Murthy, a/w. Mr.Abhishek Patil for Respondent no.11 in Appeal from Order No.312 of 2014.

CORAM : R.D. DHANUKA, J.

DATED : 16th FEBRUARY, 2016

P.C.

By consent of parties, all the appeals from orders were heard together and are being disposed of by a common order.

2. All the appeals except Appeal from Order No.312 of 2014 are filed by various occupants of the suit structures who were issued notices under section 351 of the Mumbai Municipal Corporation Act by the Municipal Corporation of Greater Mumbai alleging various unauthorized constructions in respect of the suit structures. The subject matter of the Appeal from Order No.312 of 2014 is an order passed by the learned trial judge in the notice of motion challenging an action under section 354 of the Mumbai Municipal Corporation Act issued by the Mumbai Municipal Corporation.

3. The owner of the suit property is impleaded as one of the party respondent in the Appeal from Order No.312 of 2014. I have heard learned counsel appearing for all the parties.

4. Mr.Sakhare, learned senior counsel appearing for the appellants in all the

matters invited my attention to the order passed by the learned trial judge which is subject matter of Appeal from Order No.312 of 2014 alongwith seven companion appeals. It is submitted that the suit structures were not in the dilapidated condition. He submits that pursuant to the interim order passed by this court in view of the conflicting reports submitted by the parties, the matter was referred to the Technical Advisory Committee constituted in view of the guidelines framed by this court in a writ petition. He submits that the said Technical Advisory Committee after considering the submissions of all the parties has submitted a report and was of the opinion that the structures in question could be repaired and was not required to be demolished. He submits that though initially the Technical Advisory Committee had given opinion that Municipal Corporation can take an action in respect of the unauthorized portion, the said opinion was subsequently deleted from the recommendation made by the Technical Advisory Committee.

5. My attention is also invited to the affidavits filed by the Municipal Corporation thereby accepting the report submitted by the Technical Advisory Committee insofar as action of the Municipal Corporation under section 354 of the Mumbai Municipal Corporation Act is concerned. It is the stand of the Municipal Corporation that since the Technical Advisory Committee had opined that the building could be repaired and did not require to be pull down, no action could be taken by the Corporation pursuant to such notices issued under section 354. It is thus submitted that the order passed by the learned trial judge which is subject matter of the Appeal from Order No. 312 of 2014 deserves to be set aside and the appeal be allowed.

6. Insofar as the orders passed by the learned trial judge passed in the action initiated by the Municipal Corporation under section 351 of the Mumbai

Municipal Corporation Act is concerned, my attention is invited to the observations made by the learned trial judge to the effect that the documents including the plan produced by the appellants were not considered by the Designated Officer. It is submitted that though the learned trial judge made various observations and came to a prima facie conclusion about the validity of the order passed by the Designated Officer in favour of the appellants, the learned trial judge dismissed the notice of motion merely on the ground that an adverse order came to be passed in the action under section 354 in the separate suit which was subject matter of Appeal from Order No.312 of 2014. He submits that in view of the subsequent development and in view of the recommendation of the Technical Advisory Committee which is accepted by the Municipal Corporation, since action under section 354 does not survive, the impugned order passed by the learned trial judge in the notice of motion challenging the action under section 351 also deserves to be set aside on that ground. He submits that even otherwise the appellants had produced large number of documents before the Designated Officer which were not considered. It is submitted that the appellants can demonstrate with the assistance of those documents that order passed by the Designated Officer was totally in violation of principles of natural justice.

7. Mr.Murthy, learned counsel appearing for respondent no.11 in Appeal from Order No.312 of 2014 who is the owner/landlord of the suit property submits that the impugned order passed by the learned trial judge is correct and does not require any interference. He also made his submission insofar as validity of the order passed by the Technical Advisory Committee and affidavit in reply filed by the Municipal Corporation in an action under section 354 of the Municipal Corporation is concerned. He submits that if this court comes to the conclusion that the Designated Officer has not considered all the documents and if the order

passed by the Designated Officer is set aside by this court, an opportunity be also rendered to the respondent no.11 while the matter is remanded back to the Designated Officer for reconsideration.

8. Ms.Panda, learned counsel for the respondent no.7 would submit that even according to the respondent no.7 the appellants have carried out various unauthorized constructions which were subject matter of the notices issued under section 351 and prays that the respondent no.7 also be permitted to appear before the Designated Officer if the matter is remanded for reconsideration of the action under section 351 of the Mumbai Municipal Corporation Act, 1888.

9. Insofar as submission of the learned counsel for respondent no.7 is concerned, in my view at this stage the respondent no.7 need not be given any opportunity to appear before the Designated Officer. The respondent no.11 who is the owner of the suit property is already permitted to appear before the Designated Officer in an action under section 351 initiated by the Municipal Corporation is concerned. There are rival claims of the appellants and the respondent no.11 insofar as action initiated by the Municipal Corporation is concerned. I am thus not inclined to accept the request of the learned counsel for the respondent no.7 to permit the respondent no.7 to represent their case before the Designated Officer. If the respondent no.7 seeks to produce any documents, the respondent no.7 can furnish a copy thereof to the respondent no.11 to bring it to the notice of the Designated Officer of the Municipal Corporation.

10. Insofar as submission of Mr.Murthy, learned counsel for the respondent no.11 challenging the validity of the order passed by the Technical Advisory Committee and affidavit in reply filed by the Municipal Corporation is concerned,

in my view the said order passed by the Technical Advisory Committee has attained finality. This court thus cannot go into the validity of the said order passed by the Technical Advisory Committee and the stand taken by the Municipal Corporation insofar as action under section 354 of the Municipal Corporation is concerned.

11. Insofar as action under section 351 is concerned, a perusal of the order passed by the learned trial judge indicates that the Designated Officer has not considered various documents produced by the appellants. Various observations are thus made in favour of the appellants insofar as validity of the order passed by the Designated Officer is concerned. The observations made by the learned trial judge insofar as validity of the order passed by the Designated Officer is concerned are not impugned by any of the respondents to the present proceedings including Municipal Corporation.

12. In my view the interest of justice would be met with if the impugned order passed by the learned Designated Officer is set aside on the ground that the same is passed without following the principles of natural justice. At the same time it would be also appropriate if the opportunity is also rendered to the respondent no.11 to appear before the Designated Officer and to produce the relevant documents and to make their submissions. The impugned order passed by the Designated Officer in all these matters thus deserves to be set aside.

13. I, therefore, pass the following order :-

- (a) Appeal from Order No.312 of 2014 is allowed.
- (b) The impugned orders passed by the learned trial judge in all the notice of motions are set aside.

(c) The learned Designated Officer is not required to go into the validity of the order passed by the Technical Advisory Committee.

(d) The impugned orders passed by the Designated Officer in each of the seven appeals are set aside. The matter is remanded back to the learned Designated Officer for consideration of the action under section 351 denovo. The Designated Officer shall allow the appellants as well as the respondent no.11 (Vision Properties) to produce the documents and shall hear the appellants as well as the said Vision Properties through their authorized representatives before passing any order.

(e) The learned Designated Officer shall pass a fresh order in accordance with law and without being influenced by the earlier order passed by the Designated Officer and the observations made by the learned trial judge in the impugned order.

(f) The appellants as well as respondent no.11 shall file their reply along with documents within four weeks from today and serve a copy of their respective reply along with the documents upon each other simultaneously.

(g) Both the parties are also permitted to file their further reply to the allegations if any made against them in the

submissions made by the other party in their submissions/reply. Such additional reply shall be filed within two weeks from the date of service of the initial reply.

(h) The learned Designated Officer shall decide the matter within eight weeks from the date of parties filing their reply.

(i) It is made clear that since the recommendations made by the Technical Advisory Committee is accepted by the Municipal Corporation, the action initiated by the Municipal Corporation under section 354 of the Municipal Corporation Act is set aside.

(j) The appellants in Appeal from Order No.312 of 2014 agree to withdraw the suit pending in the City Civil Court insofar as action under section 354 of the Mumbai Municipal Corporation Act is concerned within two weeks from today. Statement is accepted.

(k) Till the Designated Officer decides the matter on remand and such decision is communicated to the appellants and for a period of two weeks thereafter, the Municipal Corporation shall not take any coercive action against the appellants.

14. Appeals from orders are disposed of in the aforesaid terms. No order as to costs. In view of disposal of the appeals from orders, civil applications do not

survive and are accordingly disposed of.

15. Parties to act on the authenticated copy of this order.

[R.D. DHANUKA, J.]