

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.528 OF 2016
in
APPEAL FROM ORDER NO.101 OF 2011

M/s Raj Doshi Exports Pvt Ltd .. Applicant/Intervener
vs

In the matter between

Ajaykumar Hariram Maru & ors .. Appellants
vs
Chief Officer/M.B.R & R Board (Unit MHADA) & ors..Respondents

Ms.Pruna R Lalchandani for Applicant
Mr.Jitendra Damani for Appellants
Mr.P.G.Lad for Respondent nos.1 and 2
Mr.S.K.Sonawane for BMC-Respondent nos.3 and 4

Coram: G.S.KULKARNI, J.
Date : 25th APRIL, 2016.

P. C.

1. This intervention application has been filed by a third party namely M/s Raj Doshi Exports Pvt.Ltd who are owners of property bearing C.S.No.875 and 875/1 housing a building known as “Nand Bhuvan”. This property of the applicant is adjoining to the suit building namely 'Maroo Bhuvan” being subject matter of this pending appeal. Prayers made in the present Application are as follows :

“(a) the Applicant be permitted to intervene in the above matter and the appellants be directed to join Applicants as party Respondents;

(b) that this Hon'ble Court be pleased to direct Mumbai Building Reconstruction & Repair Board (MBRRB/MHADA) and/or Municipal Corporation of Greater Mumbai (MCGM) to demolish the suit building namely Maroo Bhuvan situated at Babu Genu Road, Kalbadevi Mumbai-400 002;”

2. The case of the applicant is that the suit premises 'Maroo Bhuvan' is in a very dangerous condition and if there is an unfortunate incident of a building collapse, it would cause damage to the adjoining premises of the applicants namely 'Nand Bhuvan'. It is submitted that the suit premises namely 'Maroo Bhuvan' has already been declared as a dangerous building and therefore, it is necessary that the respondent no.1-Chief Officer, Mumbai Building and Reconstruction Board, undertakes demolition of the building.

3. Learned counsel for the applicant has relied upon the earlier orders passed in this appeal. A perusal of the order dated 12th July 2011 passed by this Court indicates that the building is already vacated. In this regard, following observations are made in paras 2 to 4 of the said order which read thus :

“2. Mr. Lad, the learned counsel for the MHADA, contends that there are about 102 tenements and 87 tenements were in occupation of the tenants. All the tenants have already vacated the premises and shifted elsewhere as building is in dilapidated and dangerous condition. He contends that the plaintiffs, who are the owners of the building and also in occupation of the remaining tenements, are also not carrying on business in that building because of the same danger. He states that the MHADA has no objection if the owners of the building, i.e., the plaintiffs come up with a plan for re-construction of the building and if proposal is found to be proper, MHADA will give NOC and the plaintiffs themselves may reconstruct building and according to him, if owner does not take that responsibility, MHADA as per Rules will have to undertake work of the re-development.

(Emphasis supplied)

3. In view of the fact that notice issued on 9.12.2009 by the MHADA only indicate that certain repairs are required and not reconstruction, at this stage, it will be appropriate to find out what repairs are actually required. The learned counsel for the plaintiffs contends that after the required repairs of specified nature and cost estimated tenders may be called and the contractor submitting lowest tender may be given work and the plaintiffs are willing to carry out work, through such contractor.

4. In view of the above submissions and circumstances, in my opinion, purpose will be better served if some other structural engineer is appointed as Court Commissioner to make inspection of the disputed building and to submit its independent report specifying the repairs, which may be needed and approximate cost of the same. In case, the repairs are not possible and it is necessary to demolish the building for safety of the people, the Court Commissioner may give reasons for the same. Therefore, Registrar General shall appoint some structural engineer from the panel to make inspection of Shree Maru Bhavan, 51-55 & 57-57B, Babu Genu Road, Kalbadevi, Mumbai and to submit report within three weeks. Said Court Commissioner shall take the photographs of the structure also. They shall be liable to pay fees and cost of the Structural Engineer to be appointed as Court Commissioner. Plaintiffs/appellants shall deposit the

amount of Rs.16,545/- for the payment of fees of M/s Nadkarni and Company within one week from this date. After the amount is deposited, M/s. Nadkarni and Company will be allowed to withdraw the amount.”

4. Thereafter, Structural Engineers namely M/s Shrinivas M.Kini & Co. was appointed to submit a report as regards the structural feasibility and stability of the suit building 'Maroo Bhuvan'. A report came to be submitted being Report dated 30th August, 2011 making the following recommendations:

*“11. **RECOMMENDATIONS:** As could be seen from the working above that it is feasible to re-develop the building which is prudent approach than to repair the building as explained is in foregoing paras. The old tenants would be re-accommodated in new building of which life could be taken at least 70 years. Moreover, the problem of tenants of not being able to contribute would also be solved without financial burden. The owner with the help of tenants could monitor the redevelopment on the norms/rules/regulations condition laid down under section 33 (7) of D.C.Regulations of MHADA Act.”*

(Emphasis supplied)

5. It appears that nothing has happened after 30th August, 2011 that is after the above report of the Structural Engineers came to be placed on the file of this Appeal. The appellant also did not challenge the said report. The appellant also has not moved any application to shoulder any responsibility to either repair or pull down the building.

6. Learned counsel for the applicant has relied upon photographs of the suit building (also shown to all parties) to demonstrate that the building is in a dangerous condition. In fact in view of the order of this Court dated 12th July 2011 recording about the dangerous condition of the building, and that, all occupants have vacated the same there hardly remains anything to be disputed that the building has not become dangerous. Thus the contention on behalf of the Applicant is that in case of any unfortunate incident, it is likely to cause severe harm to human lives and property of the residents of their building namely “Nand Bhuvan”.

7. Learned counsel for the appellant has opposed this position. He submits that the suit building can be repaired and that the appellant would require one and half years time to undertake repairs. Such a statement as being made on behalf of the appellant is quite surprising as it is made for the first time, when nothing was done on behalf of the appellant during the pendency of this matter for more than five years. Moreover, this Court in its order dated 12th July 2011 had in fact recorded a statement on behalf of the MHADA that all the tenants have already vacated and that they have shifted

elsewhere and that building was in a dilapidated and dangerous condition. It was also recorded in the said order that the appellant who are owners of the building who were in occupation of the remaining tenements were also not carrying on business in the building because of the dangerous condition of the building. Further a statement on behalf of the MHADA was recorded that the MHADA would not have any objection if the appellant who were the owners of the building were to come up with a plan and reconstruct the building and if a proposal is found to be proper MHADA will issue a NOC and the appellants' may themselves re-construct the building and if the owner does not take that responsibility to repair the building, MHADA would undertake the repairs. Despite such a statement being recorded in the order dated 12th July, 2011 it appears that the appellant/original owners have not submitted any proposal to the MHADA to undertake re-construction of the building. All this was the position in the year 2011, today we are in the year 2016.

8. Considering the submissions on behalf of the applicants and MHADA by the year 2016 the situation appears to have

worsened and the building appears to have further deteriorated. The applicants have annexed to this application several complaints as made by the association of tenants of their building “Nand Bhuvan” as also individual complaints about the dangerous nature of the suit building, causing a serious threat to their lives.

9. Mr.Lad learned counsel for MHADA has supported the submissions as made on behalf of the applicants. It is submitted that if the building collapses, which it may, considering the ruinous condition it would seriously damage the adjoining buildings. As also the lives of occupants of the said adjoining building namely “Nand Bhuvan” would be in danger. Considering the aforesaid position, learned counsel for MHADA has tendered and placed on record written submissions signed by Shri Suryakant S.Teli Deputy Engineer C/2 Division/MBRRB and Shri.M.A.Bashir Executive Engineer C-2 Division, MBRRB. They are taken in record and marked 'X' for identification. In these submissions it is stated that MHADA would undertake the demolition of the said building within 120 days. The submissions read thus :

“In this respect Shri M.A.Bashir Executive Engineer and Shri

Suryakant S.Teli Deputy Engineer in charge of C-2 Division of M.B.R & R. Board respectively submit schedule of demolition of said property from the date of the order passed by the Hon'ble Court as follows :-

Sr.No.	Description	Period	
1	Fixing Agency for demolition	20 days	
2	Demolition of said property	120 days	

This is submitted before the Hon'ble Court for information please.

S/d
(Shri Suryakant S.Teli)
Deputy Engineer
C-2 Division/MBRRB

S/d
(Shri M.A.Bashir)
Executive Engineer
C-2 Division/MBRRB

10. Having heard learned counsel for the parties, and taking into consideration submissions on behalf of the learned counsel for the applicants and MHADA it appears that if the suit building is demolished by the MHADA no prejudice whatsoever would be caused to the appellant/owner. It is not the case of the Appellant/owner that the appellant will not be in a position to undertake re-development of the premises. In the report as submitted of M/s Shrinivas M.Kini & Co it is recorded that it is not feasible to undertake repairs of the building but what was recommended was to redevelop the building.

11. There is much substance in the submissions on behalf of the MHADA and the applicants. The Court would be required to

consider larger public interest and the patent danger, the suit building possesses to the adjoining premises and the parties do not dispute that these are adjoining buildings and there are occupants in the adjoining buildings. On the background of these facts and submissions it may be observed that it is matter of common knowledge that considering the proximity of the buildings in Mumbai in an unfortunate event of a collapse of any old dilapidated building it would definitely endanger lives of the occupants of the adjoining buildings. For last five years no attempt has been made either by the MHADA or the Appellant/owner to undertake repairs or to redevelop the suit building and if this be the position then MHADA would be correct in contending that it is required to discharge its statutory obligation to take appropriate action for demolition if the building poses a danger to the occupants of the adjoining building. The MHADA cannot be prohibited from discharging its legal obligation under the MHADA Act. MHADA has thought it appropriate to take action in discharge of its statutory obligation. In fact as clear from the earlier orders appropriate action as would be necessary as per the situation existing from time to time was required to be initiated by MHADA long back and MHADA's submission to that effect were

recorded in the order dated 12th July, 2011 passed by this Court. In the current position MHADA in its wisdom has thought it appropriate to demolish the building and has accordingly given a schedule of demolition as contained in the written submissions signed by Mr.Suryakant Teli Deputy Engineer and Mr.M.A.Bashir Executive Engineer which is placed on record today.

12. In the light of the above submissions and the facts and circumstances of the case the intervention of these applicants for the purposes of prayer Clause (b) of the Civil Application is required to be allowed taking into consideration the larger public interest.

13. The Civil Application is thus being disposed of by the following directions :

- (i) It shall be permissible for respondent nos.1 to 4 to this Civil application discharging their duties under MHADA Act and MMC Act respectively to take appropriate action of demolition of the suit building namely 'Maroo Bhuvan' as per the submission and schedule of Shri.Suryakant Teli Deputy Engineer and Shri.M.A. Bashir

Executive Engineer as taken on record and marked 'X' for identification.

(ii) It would be completely the discretion of the said authorities to undertake appropriate action as regards the demolition as per requirement of the situation and as they deem fit and proper;

(iii) It would be also permissible for the MHADA and the Municipal Corporation to undertake any urgent precautionary measures as may be necessary in the interest of safety of human lives and property.

(iv) It is clarified that the demolition at the hands of MHADA would not affect any legal rights of the appellant/owners who are otherwise entitled to their legal rights in respect of the suit building as per the observations made by this Court in para 2 of the order dated 12th July, 2011 which remain completely undisturbed as also the legal rights of the tenants who were required to vacate the building.

(v) All contentions of the original parties to the appeal on

the merits of the matter are expressly kept open.

14. Civil Application is accordingly disposed of in the above terms. The applicant has placed on record the recent photographs of the suit building which are taken on record and marked “X-1” for identification.

15. At this stage, learned counsel for the appellant seeks stay of this order. Considering the facts and circumstances of the case the request for stay is rejected.

(G.S.Kulkarni, J)