

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

WRIT PETITION NO. 5356 OF 2015

Mr. Vency Correa

..Petitioner

v/s.

Mira Bhayander Municipal Corporation
& Ors.

..Respondents

Mr. S.A.Oak i/b. Sagar Joshi for the Petitioner.

Mr.V.P.Sawant i/b. K.P.Shetye for the respondent nos.3 to 29 and 31

Mr.M.S.Lagu for the respondent Nos.1 and 2.

CORAM : RANJIT MORE &

SMT. ANUJA PRABHUDESSAI, JJ.

DATED : SEPTEMBER 19, 2016.

P.C.

1. Heard Mr. Oak, learned Counsel for the petitioner and the learned Counsel Mr. Sawant for the respondents.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner has challenged the permission granted by the Corporation to carry out repairs to the subject chawl. Mr. Oka learned Counsel for the petitioner invited our attention to the

provisions of Section 254 and 264 of the Mumbai Municipal Corporation Act. He submitted that the Commissioner has no powers under Section 264 of the Mumbai Municipal Corporation Act to grant such permission which order can be granted under Section 254 of the Mumbai Municipal Corporation Act, that too to the owner of the chawl. He further submitted that the chawl in question is in dilapidated condition, and therefore repairs is not at all advisable, and the petitioner being the owner of the structure is ready and willing to redevelop the chawl.

3. Mr.Sawant, learned Counsel for the respondent, on the contrary, vehemently opposed the petition. He submitted that in pursuance of the permission impugned in the petition, the occupants collected nearly Rs.95 lakhs; vacated the respective premises in the chawl and thereafter the repair work has commenced. He submitted that the repairing of outer portion of the chawl is completed and at present the internal portion of the chawl is being repaired. To substantiate, he placed on record the photographs of the chawl which shows that the substantial repairs are going on.

4. Having considered the rival submissions, we find that both the provisions of Section 254 and 264 of Mumbai Municipal Corporation Act operate in different field. Section 254 contemplates that the person who intends to carry out repairs, alterations, etc, to give notice to the Commissioner in the manner prescribed in the guide lines. Section 264 contemplates removal of the structure which are in ruinuous condition. Under this Section, the Commissioner is authorized to issue notice to the owner, occupier of the structure to pull down, secure, remove or repair such structure. In these circumstances, we do not find any merit in the contention of Mr. Oka that permission cannot be granted to the occupants to repair the building.

5. Be that as it may, in the present case, it is not in dispute that the subject chawl was in dilapidated condition. The Commissioner, therefore, is undoubtedly authorized to take action under Section 264 of the Mumbai Municipal Corporation Act. As stated above, the Commissioner can issue notice in this regard, either to the owner or

occupant/s to remove or repair the subject structure .

6. That apart, the photographs placed on record by Mr. Sawant does disclose that the work of repair of subject chawl is almost over. Mr.Sawant, learned counsel for the respondents, submits that after repairs the subject chawl will be safe to reside by the occupants. He also states that the respondents will occupy the said chawl at their own risks. In the above circumstances, we do not find any merit in the petition. The petition is accordingly dismissed.

7. Mr. Oka, learned Counsel for the petitioner, at this stage requests for continuation of the stay in order to enable him to challenge this order before the Apex Court. The prayer is opposed by Mr. Sawant on the ground that the respondents have vacated their respective premises in the said chawl in order to carry out repairs and they will suffer hardship in case the stay is continued. Even otherwise, we do not find that any prejudice would be caused to the petitioner in case the chawl is repaired. In as much as, in the event if the petitioner succeeds and he is permitted to develop the chawl, he

would be entitled to demolish and redevelop the chawl. The prayer of the petitioner is therefore rejected.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)