

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

**APPEAL FROM ORDER STAMP NO.16856 OF 2016
ALONGWITH
CIVIL APPLICATION STAMP NO.16857 OF 2016**

Ashokkumar Prataprai Doshi and others .. Appellants

Versus

**Municipal Corporation of
Greater Mumbai and others**

.. Respondents

Mr. P M. Shah for the Appellants.

Mrs. Madhuri More for the Respondent BMC.

CORAM : R.M. SAVANT, J.

DATE : 27th JULY 2016

PC.

1 The above Appeal from Order takes exception to the order dated 10.06.2016 passed by the Learned Judge of the City Civil Court, Greater Mumbai, by which order, the Notice of Motion filed by the Appellants herein i.e. the original Plaintiffs came to be dismissed.

2 By the said Notice of Motion, the Plaintiffs have sought a direction against the MCGM to restore the water supply to the suit building which has been disconnected by the MCGM. The Plaintiffs are the tenants of the suit building known as Pratap Palace A-Wing which is a

structure of ground plus three floors standing on land bearing CTS No.1278, 1278/1 to 11 situated at J. N. Road, Mulund, Mumbai-400 080. The said building was a subject of the notice issued under Section 354 of the MMC Act on the ground that it is in a dilapidated condition. It seems that prior to the said notice, the landlord one Pratap G. Shah (HUF) had submitted a structural auditors report from the VJTI which is a re-known engineering institute in the city of Mumbai. In the said report, it has been concluded that the structure is in dilapidated condition and shall not be occupied as it may endanger to human life. In so far as the repairs are concerned, the VJTI has observed that the beams and columns are severely deteriorated and the rehabilitation to the useful condition may incur higher cost. It has further been observed that even the expected life after repair will not be significant compared with the life of the new building.

3 The Plaintiffs have also obtained the report of a structural engineer being Chande Designs Consultants Pvt. Ltd. In the said report it is concluded that due to unsafe and dilapidated condition of the building, it is recommended that the building be demolished and reconstructed. Hence, both the report of the VJTI submitted by the landlord and the report of the Chande Designs Consultants Pvt. Ltd. submitted by the Plaintiffs the conclusion is the same, namely that the building is unsafe being in a dilapidated condition and that the building be demolished and

reconstructed.

4 Hence, in the light of the fact that the two reports have identical conclusions, the necessity for referring the matter to the Technical Advisory Committee (TAC) as envisaged by the order passed in Writ Petition No.1135 of 2014 is obviated. The Learned Counsel Mr. P. M. Shah appearing on behalf of the Appellants also fairly concedes to the said position. The Learned Counsel for the Appellants however points out that the landlord is required to make alternate arrangements in terms of the notice dated 01.12.2015 and clause (1) thereof. Pertinently the landlord has not appeared in the Trial Court as well as this Court in spite of notice being served on him. Since the building in question is a private building, the responsibility for making alternate arrangement is not of the MCGM, but is of the landlord which fact is also fortified by clause (1) of the said notice. During the pendency of the above Appeal from Order, the MCGM has carried out measurement of the tenement in occupation of each of the tenants on 16.07.2016. The tabular statement has been furnished to the Learned Counsel for the Appellants. The Appellants are also apprehensive that once they vacate their premises in the building, then they would be left in the lurch. The apprehension of the Plaintiffs may be bonafide. However that cannot an impediment for them vacating the structure which is found to be unsafe and dilapidated. The object behind issuing the

notice under Section 354 of the MMC Act is to avoid any untoward incident arising out of the structure giving way or even part of the structure giving way. The security and safety of the inhabitants as also the passersby and persons in the neighbourhood is of utmost importance. The same obviously cannot be compromised. It would therefore be open for the Plaintiffs to adopt such proceedings as are permissible in law to enforce the obligations of the landlord or even to assert their rights as tenants in the matter of reconstruction of the building. If any such proceedings are filed, needless to state that the concerned Courts would consider them on their own merits and in accordance with law. In so far as the impugned order is concerned, in the light of the aforesaid, no case for interference is made out. However, subject to what is stated hereinabove, the Appeal from Order is disposed of.

5 In view of the disposal of the above Appeal from Order, the Civil Application does not survive and to accordingly stand disposed of.

[R.M. SAVANT, J]