

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER ST.NO.18385 OF 2016
WITH
CIVIL APPLICATION ST. NO. 18387 OF 2016**

Vandana Shankar Palkar & Anr

..Appellants

Vs.

The Municipal Corporation of Greater Mumbai

..Respondents

**Mr. Yashodeep Deshmukh i/b Mr. Manoj Harit for the Appellants
Mrs. M. R. Bhoir a/w Mrs. Madhuri More for the Respondent**

**CORAM : R. M. SAVANT, J.
DATE : 15th JULY, 2016**

P.C.

1 The order dated 29-6-2016 passed by the Learned Judge of the City Civil Court, Mumbai is taken exception to by way of the above Appeal From Order. By the said order the Notice of Motion filed by the Appellant / original Plaintiffs came to be dismissed, however, whilst dismissing the Notice of Motion, the ad-interim relief which was operating in the Notice of Motion No.1510 of 2015 was continued for a period of two weeks. The controversy in the Suit in question relates to the notice issued under Section 354 of the Mumbai Municipal Corporation Act, 1888 (for short the MMC Act), to the building in question being a ground + two structure wherein the occupants

have constituted themselves in to a society known as Sangam Sahakari Co-operative Housing Society situated at plot No.31/32-26, Barrister Nath Pai Nagar, Ghatkopar (East) Mumbai 400077. It seems that there are 36 members in the society and it appears that there are interse dispute between two sets of members as regards the modality to be adopted in respect of the building in question. The building in question is more than 30 years old and on account of the wear and tear is presently in a condition where the Municipal Corporation of Greater Mumbai (for short MCGM) thought it fit to issue a notice under Section 354 of the said Act.

2 The background fact to the issuance of notice is the inspection carried out of the building in question by the officers of the MCGM who are known compendiously as the Technical Advisory Committee (for short the TAC). The TAC is headed by the Director of Engineering Services MCGM and also has the Chief Engineer(B and M) the City Engineer amongst its members The issuance of the said notice has triggered of the filing of the Suit in question i.e. S. C. Suit No.2436 of 2015 wherein the instant Notice of Motion has been filed seeking an injunction to restrain the MCGM from evicting the Plaintiffs and from demolishing the Suit structure. At this stage, it is required to be noted that a school is situated in the vicinity of the building in question and that just prior to the issuance of the notice a portion of the suit building collapsed in which an old lady was severely injured. It seems that the

compound wall of the suit building has already collapsed. This resulted in the MCGM calling upon the Plaintiffs to file an undertaking that they are residing in the suit building at their own risk and that they would be responsible for any mishap if occurs due to the collapse of the building.

3 In so far as the ruinous and dilapidated buildings in the city of Mumbai are concerned, a Division Bench of this Court was seized with the issue of the process of identifying them as dangerous buildings and action to be taken in respect thereof. The said directions have been issued by the Division Bench of this Court in Writ Petition No.1135 of 2014, one of the directions is that if there is a dispute as regards the status of the building i.e. whether ruinous or dilapidated then the contesting parties should be directed to submit the structural audit report obtained by them and placed before the TAC. In the instant case, it appears that the rival group of the Plaintiffs had shown its inability to obtain a structural audit report in view of financial constraints. The MCGM had therefore directed the structural consultants M/s Sameer Mhate to submit a report. The said structural engineer accordingly submitted his report. It appears that the Plaintiffs had approached the VJTI to obtain a structural audit report but the VJTI had shown its inability to submit its report prior to October 2015. The Plaintiffs had accordingly informed the TAC that they should be given time to produce the said report. The TAC having regard to the status of the structure showed its disinclination to grant time to

the extent sought by the Plaintiffs. The TAC thereafter in its meeting convened on 6-8-2015 considered the report of structural consultants M/s. Sameer Mhate in respect of the Plaintiffs building and the TAC has submitted a report to the MCGM sometime in August 2015 under the signature of the Director (E. S. & P.) i/c, Chairman, Technical Advisory Committee.

4 In the context of the present Appeal From Order what is required to be noted is that the TAC has opined that the building under reference is not fit for human habitation and hence is to be evacuated and demolished immediately after following the due process of law under the supervision of the licensed structural consultant. It would be apposite to reproduce the conclusions of the TAC as stated in the report which for the sake of ready reference are reproduced herein under:

Conclusions of the TAC:-

“TAC committee had inspected the site on 29-7-2015 and noticed that the structure is in dilapidated condition at the time of inspection it observed that the building on adjoining plot was already demolished and it is learnt from the resident of the building while progress of the demolish of adjoining building vibrations are observed in Sangm Sahakari CHS Ltd building and effects are also seen such as cracks and settlement were observed on said building. The TAC Committee has not felt the necessity of conducting further N.D. Test, as the required N.D. Test were

already carried out by structural auditor Shri Sameer Mhate on behalf of some of the tenants which are taken on the record by the TAC Committee. TAC Committee directed Shri Sameer Mhate to conduct the chemical analysis Test. Accordingly Shri Sameer Mhate conducted the test and test result submitted on 19-08-2015. From the result it is seen that the pH value is 10.0 to 10.6, however required is 10 to 12. Further chloride content is 0.900, 0.950, 0.160, 0.80, however, Max Chloride content for RCC is 0.6 kg/CUM also Shri Sameer Mhate submitted Destress mapping plan of Gr. Floor, 1st floor and 2nd floor in which critical portion of structure are shown.

The representative of Tenants Mr. Vijay G. Garud had met the Chairman TAC on 6/6/2015 and had requested time to submit fresh Audit report and they were directed to submit the report within the month. Since they have not submitted report, they informed that if the report is not received by 8/7/2015, the decision will be taken on merits in the case. However, now they have submitted letter requesting VJTI to carry out the structural audit report vide letter dated 20/7/2015 but, same is not produced during TAC on 6/8/2015. At the same time 'N'ward staff has produce letter submitted by society member to 'N' ward on dt. 15/7/2015 stating therein that they have not having sufficient fund to carry out the structural audit and requested to give additional 6 months time period to get the structural audit of building. The TAC Committee decided that the same cannot be consider as per the condition as mentioned above and considering the structural report submitted by Shri Sameer Mhate.

After going through the reports submitted by Consultant Shri Sameer Mhate and site inspection TAC opined that the building under reference is not fit for hum habitation and hence is to be evacuated and demolished immediately after following due process of law under the supervision of licensed structural consultant. In the meantime

the ward staff shall intimated Owner / Occupier to take necessary preventive measures such as propping etc till evacuation of building to avoid any untoward incident.”

5 It is in this background that the instant Notice of Motion filed by the Plaintiffs being Notice of Motion No.4035 of 2015, came to be considered by the Trial Court i.e. the Learned Judge of the City Civil Court, Mumbai. As indicated above the Learned Judge of the City Civil Court has by the impugned order dated 29-6-2016 has dismissed the Notice of Motion. Whilst dismissing the Notice of Motion, the Learned Judge has adverted to the report obtained by the Plaintiffs i.e. the Appellants herein from the VJTI as also the report of structural engineer M/s. Sameer Mhate. The Learned Judge has observed that after going through both the reports, it is noticed that observations regarding external and internal inspection of the suit building are similar in both the reports. The Learned Judge further observed that the nature of the repairs recommended to the suit building as suggested in both the reports are almost same. The Learned Judge has recorded a finding that the Defendant i.e. the MCGM has followed almost all the guide lines laid down by this Court in Writ Petition No.1135 of 2014. The Learned Judge observed that the fact that the building requires repairs of the kind suggested in the report indicates that the building is not fit for human habitation, which fact the Learned Judge held has been substantiated by the TAC report. The Learned Judge has observed that the Plaintiffs are insisting to carry out repairs without vacating the suit

building solely on the ground that they are not in agreement with the proposal of redevelopment being pursued by the rival group of members. The Trial Court has lastly observed that it would therefore not be just and proper to allow the Plaintiffs to occupy the suit building otherwise it will collapse at any time and irreparable loss to the Plaintiffs as well as to the occupants may result. As indicated above, the Learned Judge has by the impugned order dated 29-6-2016 has dismissed the Notice of Motion.

6 The Learned Counsel appearing on behalf of the Appellants would draw this courts attention to the ad-interim order dated 16-10-2015 passed in the above Notice of Motion wherein in the operative part in clause (2) the MCGM was directed to follow the guidelines given by this Court in Writ Petition No.1135 of 2014 and again get inspected suit site through the TAC to get a fresh report regarding condition of the suit structure as per the guidelines laid down by this Court. It is the submission of the Learned Counsel for the Appellants that the said order has not been complied with and without complying with the said order the Notice of Motion was taken up for hearing. The Learned Counsel also sought to question the consideration by TAC in the absence of considering any report submitted by the Plaintiffs.

7 In my view, it is not possible to accept the contention urged on behalf of the Appellants / Plaintiffs. As indicated above, the TAC has

considered the matter and submitted its report in August 2015. The TAC is a High Power Technical Committee which is headed by the Director of Engineering Services of the MCGM and consisting of as many as 8 or 9 other members who are Senior Engineers from the Engineering Department of the MCGM. The report of the TAC itself discloses that it has taken into consideration the report submitted by the structural consultants M/s Sameer Mhate. The Learned Judge of the City Civil Court went through the report of the IIT and compared it with the report of the structural consultants M/s. Sameer Mhate and has opined that the said two reports are identical in respect of the remedial measures suggested. It has also come on record in the TAC report that the rival group as mentioned, does not have the financial wherewithal to carry out the repairs and is interested in the redevelopment of the building rather than repairs. The Trial Court as indicated above has recorded a finding that the mechanism provided by the order passed in Writ Petition No.1135 of 2014 has been followed and there is a compliance of the directions as contained in the order passed in the said Writ Petition. The TAC after giving an opportunity to the Plaintiffs to submit the report of the structural engineer appointed by them, which the Plaintiffs did not avail of in time, submitted a report by considering the report of the structural consultants M/s. Sameer Mhate. In my view the finding of the Trial Court that there is a compliance of the directions cannot be faulted with. Since the TAC has already opined in its report of August 2015 that the building is inhabitable, no useful

purpose would be served by calling upon it to once again submit a report.

8 The undertone of the current litigation appears to be the dispute between the two rival groups of members of the society. In the said process the building which is found to be inhabitable by the TAC is sought to be made the subject of the interse disputes. The question is about the safety of the inhabitants as also the safety of the people of the neighbourhood as also the passers by. The same cannot be compromised in any manner. The dispute between two sets of members cannot be resolved in a proceeding challenging the notice issued under Section 354 of the MMC Act. It seems that the members belonging to the rival group have already vacated their flats. It is the Plaintiffs who are continuing to occupy their flats albeit at their own risk. If the Plaintiffs are aggrieved by the manner in which the society is functioning they can approach the appropriate forum under the Maharashtra Co-operative Societies Act. In my view, the impugned order passed by the Trial Court does not merit any interference, the Appeal From Order is accordingly dismissed.

9 At this stage the Learned Counsel appearing for the Appellants original Plaintiffs seeks continuation of the ad-interim order. In the facts and circumstances of the case where the building is found to be inhabitable by the TAC, the continuation of the ad-interim order would result in the continued occupation of a building which is found to be inhabitable and thereby a

potential danger to the Plaintiffs, the neighbours and passers by. Hence the said prayer is rejected.

10 In view of the dismissal of the above Appeal From Order, Civil Application St.No.18387 of 2016 does not survive and to accordingly stand disposed of as such.

[R.M.SAVANT, J]