

the Maharashtra Municipal Council Act, 1949. He submits that the said notice is issued relying upon the earlier notices issued in the year 1996 and 1999 under the provisions of sections 264 (1) and 268 respectively, which were already set aside by the civil court by judgment and decree dated 12th July, 2002 in R.C.S. No.522 of 1999. He also submits that the Corporation has issued the impugned notice without following the proper procedure. Lastly, he submits that even otherwise the structure referred to in the notice is already repaired and can stand by itself even if the other portion of the chawl is demolished.

4. Mr. Bubna, the learned counsel for the Respondent No.1-Corporation submits that the impugned notice dated 25th May, 2016 issued was under section 268(5) of the Maharashtra Municipal Council Act by the Respondent No.1-Corporation after inspecting the concerned premises and on being satisfied that the said premises is in a dangerous and ruinous condition. He has further submitted that out of 59 residential occupants and 22 commercial occupants, 51 residential occupants and 15 commercial occupants have already vacated their respective premises. The corporation has also cut off the electricity. He submits that the building is in such a dangerous condition that it may collapse at any time.

5. The Petitioner had filed Writ Petition (st) No.14977 of 2016 challenging the very notice which is impugned in the present petition. The Petitioner had not challenged the said notice on the ground that he was not given an opportunity of repairing the premises as contemplated under section 264 of the Act. Be that as it may, the said petition was disposed of by order dated 6th June, 2016 by granting liberty to the Petitioner to give reply to the said notice and by directing the competent authority of Respondent No.1-Thane Municipal Corporation to pass detail order by giving due opportunity of hearing to the Petitioner. In pursuant of this order, the Petitioner filed his reply and he was heard by the competent authority. Even in this reply the Petitioner did not raise ground of non issuance of notice under section 264 of the Act but mainly claimed that the impugned notice was based on earlier notices which were already set aside. The Petitioner further claimed before the competent authority of the Respondent No.1 that the premises which he is occupying has already been repaired. The competent authority considered the grounds raised by the Petitioner and by order dated 7th July, 2016, which is also impugned in the present petition has observed that the Petitioner could not produce any documents under which he was permitted to carry out the repairs. It was also observed that the premises in question is 150 years old and is

in a ruinous and dangerous condition and the Corporation has categorized it under 'C1' category. It was also observed that repairs by the Petitioner of his tenement will not make the entire premises habitable.

6. Mr. Madan G. Sonde, the Assistant Municipal Commissioner of Thane Municipal Corporation has filed an affidavit dated 2nd August, 2016. In para No.3 of the said affidavit it is specifically stated that the premises in question is an extremely dilapidated construction and on 13.6.2016 a portion of the said premises caved in. It is also stated that the premises in question is a part of the chawl and it cannot be treated as a separate structure.

7. A perusal of the impugned notice as well as the affidavit filed on behalf of the Corporation shows that the Corporation had inspected the premises and had come to the conclusion that same is in ruinous and dangerous condition. The said notice cannot be termed as illegal merely because it refers to the earlier notices, particularly when the Corporation has satisfactorily inspected the premises and has ascertained that the premises is in ruinous condition.

8. Taking into consideration the totality of the facts and circumstances we are not inclined to interfere in the petition. The petition is accordingly dismissed.

9. It is expressly made clear that this order is restricted to the legality and validity of the notice issued by the Respondent-Corporation under sections 264 (1) (2) (3) (4) and 268(1) (c). We have not considered whether the Petitioner has legal right to the premises, which is the subject matter of the notice.

10. Mr. Damle, the learned senior counsel for the Petitioner at this stage requests for continuation of the ad-interim order for a period of two weeks. The request is opposed by the learned counsel for the Respondent-Corporation. Considering the condition of the building in question and the safety of the occupants, we are not inclined to continue the interim relief.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)