

Anand

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

WRIT PETITION NO.2977 OF 2013

Ramniwas Laxminarayan Kothari .Petitioner

Vs.

The State of Maharashtra & ors. .Respondents

Mr.K.R.Tiwari i/b. M/s.K.R.Tiwari & Co.,
Advocate, for the Petitioner
Mr.V.V.Gangurde, APP, for the Respondent No.1 –
State
Ms Surekha Sonawane, Advocate, for the
Respondent Nos.2 to 4 – MCGM

CORAM : REVATI MOHITE DERE, J.

DATE : 26.09.2016

P.C.

. Heard learned counsel for the parties.

2. By this Petition, the Petitioner seeks quashing of the summons issued by the trial Court as against him, in Complaint/Case No.24/SW/2013 filed by the Respondent – Corporation.

3. Learned counsel for the Petitioner states that the Petitioner is the landlord of the premises, being "1, Amiraj Apartment, Marwadi Bungalow, S.V.P.Road, Borivali (W), Mumbai - 400 092". He submits that the said structure is ground plus three storey and the Petitioner is in occupation of the first floor of the said bungalow. He submits that the Petitioner has rented the ground floor premises to Gangadhar Shivram Shetty, Pankaj Jivanlal Shah and Anmol Dalal. He submits that this is the second notice which was issued by the Respondents - MCGM under Section 354 of the Mumbai Municipal Corporation Act (for short "MMC" Act) with respect to the same subject matter. According to the learned counsel, the condition of the premises is not dilapidated as is alleged by the Corporation. Learned counsel has relied on certain photographs in support of his submission to show the condition of the premises. He further submits that infact, the

Petitioner has submitted a Structural Audit Report of the Auditor to the Respondent – Corporation. According to the learned counsel, the report submitted by a licensed Structural Engineer, as required under the MMC Act. Learned counsel further urged that the Petitioner is not responsible as the tenants had carried out unauthorized work on the ground floor premises. He submitted that the Petitioner had approached the authorities against the tenants and as such the Petitioner is now being made a scapegoat.

4. Learned counsel for the Respondent – Corporation vehemently opposed the Petition. She urged that the slab on the ground floor (load bearing structure) is damaged and if not repaired, the bungalow is likely to collapse. She submitted that the Structural Audit Report submitted by the Petitioner is not of a licensed Structural Engineer. Learned counsel has also relied on certain photographs to show the

condition of the said bungalow in support of her submission. According to the learned counsel for the Respondent - Corporation, the first notice which was issued under Section 354 of the MMC Act had become time barred and hence the Respondent - Corporation was constrained to issue the second notice and as such, no fault can be found in the notice issued by the Respondent - Corporation to the Petitioner.

5. Perused the papers. There is a dispute between the parties, whether the report submitted by the Petitioner is through a licensed Structural Engineer or not. Both parties also dispute the condition of the premises, whether it is dilapidated or not. The Inspection Report dated 01.07.2016 shows in Clause (4) the observations made by the JEBF that **"The slab of Gr. Floor load bearing structure is damaged and not repaired and likely to collapse at any time"**.

6. Learned counsel for the Petitioner has relied on certain photographs to show that the bungalow is not in a dilapidated condition, whereas, learned counsel for the Respondent - Corporation has also relied on certain photographs to show that the structure is infact in a dilapidated condition. Section 354 of the MMC Act reads thus :-

"354. Removal of structures, etc., which are in ruins or likely to fall.

(1) If it shall at any time appear to the Commissioner that any structure (including under this expression any building, wall or other structure and anything affixed to or projecting from, any building, wall or other structure) is in a ruinous condition, or likely to fall, or in any way dangerous to any person occupying, resorting to or passing by such structure or any other structure or place in the neighbourhood thereof, the Commissioner may, by written notice, require the owner or occupier of such structure to pull down, secure or repair such structure, (subject to the provisions of section 342) and

to prevent all cause of danger therefrom.

(2) The Commissioner may also if he thinks fit, require the said owner or occupier, by the said notice, either forthwith or before proceeding to pull down, secure or repair the said structure, to set up a proper and sufficient board or fence for the protection of passers by and other persons, with a convenient platform and handrail, if there be room enough for the same and the Commissioner shall think the same desirable, to serve as a footway for passengers outside of such hoard or fence."

(Emphasis supplied)

7. A perusal of the said Section shows that notice can be issued to the owner as well as to the occupier of the premises to carry out the repairs. Prima facie, no fault can be found in the notice issued to the Applicant, who admittedly is the owner of the premises.

8. As far as the submission, that two notices were issued under Section 354 of the MMC

Act, it appears that the first notice had become time barred hence, the Respondent – Corporation was constrained to issue the second notice under Section 354 of the MMC Act.

9. It appears that the ground floor premises is in occupation of the Oriental Bank and the proceedings are pending before the Debts Recovery Tribunal.

10. Considering that there are disputed questions of fact, the same cannot be gone into, in Writ Jurisdiction. Hence, Petition is dismissed.

11. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

All contentions of both the parties are
kept open.

(REVATI MOHITE DERE, J.)