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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12025 OF 2013

Shri. Raj Narayan Ramvachan Yadav

... Petitioner

Versus

The Municipal Corporation of the
City of Thane and Ors.

... Respondents

Mr. Mayuresh Modgi for the Petitioner.

Mr. R.S. Apte, Senior Advocate i/by Mr. Ajit Ram Pitale for the
Respondent Nos.1 to 3.

Mr. Roshan Tanna i/by Mr. J.M. Joshi for the Respondent Nos.5 and 6.

Mrs. M.P. Thakur, AGP for the Respondent No.8.

CORAM : A.S. OKA &
C.V. BHADANG, JJ.

DATE : 24th FEBRUARY, 2016

P.C.

1 Heard the learned counsel appearing for the Petitioner, the learned Senior Counsel appearing for the first to third Respondents and the learned counsel appearing for the fifth and sixth Respondents. The prayer in this Petition under Article 226 of the Constitution of India is inter alia for enforcing the notice issued on 19th October, 2012 under Sub-Section (5) of Section 268 of the Maharashtra Municipal Corporations Act, 1949 in respect of the building which is more particularly described in prayer clause (a).

2 We have perused the affidavit in reply filed by Shri Sambhaji Tulshiram Jadhav, Police Inspector attached to Rabodi Police Station on behalf of the eight Respondent and the report annexed thereof. We have also perused the compilation of documents tendered across the Bar by the learned Senior Counsel appearing for the Municipal Corporation. On 11th June, 2012 a notice under Section 260(1) of the said Act of 1949 was issued by the first Respondent – Municipal Corporation in respect of an unauthorised shed constructed on the building in question. The said notice was served on 21st June, 2012. On the basis of the said notice, a further notice dated 19th October, 2012 was issued by the first Respondent under Sub-Sections (1) to (4) of Section 268 of the said Act of 1949. As the notices were not complied with on 8th September, 2015 a requisition was submitted to the Senior Inspector of Rabodi Police Station under Sub-Section (5) of Section 268 of the said Act of 1949.

3 During the pendency of the present Petition, the shed subject matter of the said notices has been admittedly demolished by the first Respondent – Municipal Corporation.

4 It appears to us that on 2nd December, 2014 a report was submitted by the Deputy Engineer of the first Respondent after inspection of the said building. The report records that prima facie, the

condition of the building appears to be dangerous. The report records that structural audit of the building is required to be done through an expert. On the said report, an order was made on 9th December, 2014 by the Assistant Commissioner directing the structural audit as well as issuance of notices under Sections 264 and 268 of the said Act of 1949. On 15th December, 2014 a notice under Section 264 was issued by the Assistant Commissioner declaring the said building to be dangerous. Thereafter, on 10th August, 2015 another notice was issued by the Deputy Commissioner, Zone-3 of the said Municipal Corporation observing that there were cracks in the columns of the building and that balcony of the building has become dangerous. The notice records that prima facie, the condition of the building appears to be dangerous.

5 There is a reply filed to the Petition by Shri Sagar Sunil Gholap, Assistant Municipal Commissioner. To the said reply, structural audit report obtained by the occupants of the building of M/s. A.V. Patankar & Associates has been annexed. Exhibit R-6 is the structural audit report of Shri Rajkumar Bhonde. The report records that the same has been prepared on the basis of visual inspection. The report suggests that the building could be repaired. The report records that the building is classified as falling in C2 B category.

6 The report submitted by the Police Inspector of Rabodi Police Station records that the Municipal Corporation has called upon the occupants to submit the structural stability report either of VJTI or IIT and the said report is not yet received.

7 Perusal of the notices issued by the first Respondent shows that there is no final conclusion recorded that the building has become very dangerous and that the same cannot be repaired. What is recorded is a only prima facie opinion of the officers.

8 The learned Senior Counsel appearing for the Municipal Corporation states that the Municipal Corporation will obtain the structural audit report of the experts of IIT, Mumbai. He states that after obtaining the report, hearing will be given to all parties concerned and thereafter, the Municipal Corporation will pass an appropriate order. He submits that as the report of IIT ought to have been submitted by the occupants, the Municipal Corporation may be permitted to recover from the occupants the charges payable to the IIT.

9 On conjoint reading of the documents on record, we find that the Municipal Corporation has not recorded any final conclusion as regards the structural status of the building in question. Therefore, the Municipal Corporation will have to get the structural audit done through IIT. The learned counsel appearing for the fifth and sixth Respondents state that the said Respondents are willing to give

undertaking that they will continue to occupy the said building at their own risk and in the event the building or any part thereof collapses, they will be solely responsible for the loss caused to any third party. As all the occupants of the building are not before the Court, the Municipal Corporation will have to inform all the occupants in writing that they will be occupying the building at their own risk and that they will be responsible for the damage caused to the third parties in the event there is a collapse of the building or any part thereof.

10 The another issue raised by the learned counsel appearing for the Petitioner is that though the shed was illegally constructed on the building, criminal law has not set in motion against the wrong doers. The said prayer deserves to be accepted as order of demolition of the shed has attained finality and the shed has been demolished.

11 Hence, we dispose of the Petition by passing the following order :-

ORDER

- (i) We direct the first Respondent - Municipal Corporation to immediately approach the Indian Institute of Technology, Powai, Mumbai for the purpose of getting the structural audit of the building in question carried out. The first Respondent – Municipal Corporation will request the IIT to complete the structural audit as

expeditiously as possible and preferably within a period of two months from the date on which the application is made by the Municipal Corporation. The costs and charges of IIT shall be paid by the first Respondent – Municipal Corporation. However, it will be open for the Municipal Corporation to recover the said amount from the occupants and/or owners of the building in accordance with law. The issue of liability to pay the amount is kept open;

- (ii) After the report is submitted by the IIT, after issuing appropriate notices, the Municipal Corporation shall give an opportunity of being heard to all the affected parties and shall pass appropriate order. Needless to add that the copies of the report submitted by the IIT shall be made available for inspection to all concerned before they are heard. The Municipal Corporation shall supply copies of the report to the parties subject to payment of copying charges;
- (iii) Appropriate order shall be passed by the Municipal Corporation as expeditiously as possible and in any event on or before 31st May, 2016;
- (iv) We make it clear that we have made no adjudication on

the present structural status of the building;

- (v) We direct the fifth and sixth Respondents to file undertakings in this Court within a period of four weeks from today stating therein that they will continue to occupy the premises in their possession at their own risk. Undertakings to further state that in the event there is a collapse of the building or any part thereof, they will be solely responsible for the damage caused to any third party;
- (vi) We direct the first Respondent to issue notices to all the other occupants of the building as well as the owners of the building informing that they will continue to occupy the building at their own risk and in the event there is a collapse of the building or any part thereof, they will be solely responsible for the loss caused to any third party. Such a notice shall be served by the Municipal Corporation within a period of three weeks from today;
- (vii) As regards the construction of illegal shed, the Municipal Corporation shall lodge complaint with the local police station within a period of three weeks from today for setting the criminal law in motion against the wrong doers;

- (viii) Writ Petition is disposed of on above terms;
- (ix) All concerned to act upon an authenticated copy of this order.

(C.V. BHADANG, J)

(A.S. OKA, J)