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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.106 OF 2015
WITH
CIVIL APPLICATION NO.137 OF 2015
IN
APPEAL FROM ORDER NO.106 OF 2015

- | | | |
|--|---|-------------------|
| 1. Al-Falah Society |] | |
| a registered society, having its office |] | |
| at: Shop No.1, Ground floor, |] | |
| 44/46, Parvati Building, Ismail Curtey Road |] | |
| Mumbai 400 003 |] | |
| Through : |] | |
| President Mr.Shabbir Ahmed Abdul Gani |] | |
| |] | |
| 2.Mr. Sarwar Hussain Mistry, |] | |
| age: 64 yrs, Occn. Building contractor |] | |
| r/o : room No.2, First floor, 44/46 Parvati Building |] | |
| Ismail Curtey Road, Mumbai 400 003 |] | |
| |] | |
| 3. Mr. Imran Abdul Aziz |] | |
| age: 34 yrs.Occn. Business, |] | |
| r/o room No.3, first floor, 44/46 Parvati Building |] | |
| Ismail Curtey Road, Mumbai 400 003 |] | |
| |] | |
| 4. Mr. Javed Abdul Aziz |] | <u>Appellants</u> |
| age: 38years, Occn: Business, |] | Original |
| room No.4, second floor, 44/46, Parvati Building |] | Plaintiffs |
| Ismail Curtey Rad, Mumbai roo 003. |] | |
| |] | |
| 5. Mrs. Shamsunia Sharif Khan |] | |
| age: 65 years, Occn. Housewife, |] | |
| r/o room No.5, second floor, rr/46, Parvati Building |] | |
| Ismail Curtey Road, Mumbai 400 003 |] | |
| |] | |
| 6. Mr. Qutbuddin Maqsood Ali Shaikh |] | |
| age: 47 yrs. Occn. Teacher |] | |

r/o room No.6, third floor, 44/46, Parvati Building]
Ismail Curtey road, Mumbai 400 003]
]
7. Mrs. salma Humayun Maniyar]
age: 63 years, Occn. Housewife]
r/o room No.7, third floor, 44/46, Parvati Building]
Ismail Curtey Road, Mumbai 400 003]

-VS-

1. Municipal Corporation for Greater Mumbai]
Mahapalika Building, Mahapalika Marg]
Opp. CST Railway Station, Fort, Mumbai 400 001]
] Respondents
2. Administrative Officer (Estate)] Original
Mumbai Municipal Corporation,] defendants.
"C" Ward Office, 76, Shrikant Palekar Marg,]
Off. Chandanwadi Marine Lines (East)]
Mumbai 400 002]

Mr. Ashok Pandey, for the Applicant.

Mr. H.S. Deshpande, Senior Advocate a/w Mrs. Madhuri More, for the Respondents .

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 04th OCTOBER, 2016.

ORAL JUDGMENT.:

1. This appeal takes an exception to the order dated 20th September, 2014, passed by City Civil Court, Mumbai, in Notice of Motion No.2333 of 2014 in L. C. Suit No.1759 of 2014. By the said order, Notice of Motion filed by appellants seeking relief of interim injunction restraining

respondent Municipal Corporation from disturbing their possession, in the suit premises came to be dismissed.

2. As per case of appellants, they are in possession of various tenements in the building bearing C.T.S. No.44/46 situate at Ismail Curtey Road as tenants. Building is owned by the Municipal Corporation and it consists of ground plus three upper floors. It is their contention that their possession in the suit building is since prior to 1960 or thereabout. They are paying the rent regularly. The locality is such that it is conducive for their respective businesses and education of their children. In such situation on 28.5.2014, they received the notice issued by the Municipal Corporation, calling upon them to vacate the said building on the count that it has become dangerous and dilapidated and needs to be reconstructed. On receipt of this notice, appellants immediately replied the same. According to appellants, building is not at all in dangerous or dilapidated condition; it only requires some structural repairs which they are ready to carry out under the supervision of licenced Structural Engineer. They have informed accordingly to the Municipal Corporation vide letter dated 9.1.2014. However, Municipal Corporation is bent upon demolition of the building on the pretext of carrying out new construction thereon. It is urged that the respondents are also not providing any

permanent accommodation to the appellants, but only temporary accommodation, that too, at Kurla or Paral, which is far away from the appellants' present place of residence. Hence according to appellants, the trial Court should not have refused to grant relief of ad-interim injunction, as claimed by the appellants, restraining Municipal Corporation from demolishing the suit building; especially when trial Court in its impugned order has observed that it is necessary to go into details of each and every fact, raised by both parties.

3. Per contra, learned counsel for respondent-Municipal Corporation has supported the impugned order of the trial Court, by pointing out that the Municipal Corporation has followed due procedure before passing the order requiring the suit structure to be demolished on the count that it has become dangerous and dilapidated. It is submitted that the structural audit of the suit structure was carried out and thereafter Technical Advisory Committee (for short "TAC") has taken its own independent decision by following guidelines laid down by the Division Bench of this Court in Writ Petition No.1135 of 2014 vide order dated 24.6.2014. It is submitted that the Structural Consultant and TAC, which consists of the experts, had categorically recommended the demolition of the suit structure on the ground that it has become dilapidated and

dangerous. It is submitted that, during the reconstruction of the said structure, temporary alternate accommodation will be provided to the appellants; therefore, they should not have any grievance.

4. In my considered opinion, though it is true that according to appellants as stated above the suit structure is not in such a dangerous and dilapidated condition making it necessary to demolish the same and requires only some repairs which they are ready to carry out, they had also made application for permission to that effect to the Municipal Corporation vide letter dated 9.1.2013. The structural audit conducted by the Municipal Corporation, through M/s Joshi Consultants reveals that the suit structure needs to be reconstructed. The report of M/s Joshi Consultants is produced on record at page No.162, which reveals that the Structural Engineer and Consultant have carried out detailed inspection of the suit building. They had also carried out requisite specific tests as laid down by the Division Bench of this Court, in its order dated 24.6.2014 in Writ Petition No.1135 of 2014. The minutes of the meeting further states that on the basis of said tests including Core Test taken to establish strength of the concrete, it was revealed that the columns, beams and slabs have been affected, upper floors have broken, columns, beams, slabs termite has leakage from the floor and the roof and therefore the

structure needs to be evacuated. The minutes of the meeting of the TAC held on 5.5.2014 are produced at page 80 which reveal that TAC, which consists of experts in the field, has considered and carefully analyzed the report of M/s Joshi Consultants. The Members of TAC Committee alongwith Municipal Commissioner also inspected the suit structure on 28.4.2014, TAC Committee also considered reports of Non Destructive Testing, Core test and noticed that the cube strength of the concrete was found to be below 8.0 Mpa only. Hence having regard to the condition of the suit structure which has become dilapidated and beyond repairs, categorically came to the conclusion that, *"in view of the distresses observed in the building and limited service life observed post repairs, it is decided unanimously that the repairs to the building are not viable and hence building shall be immediately evacuated, barricaded to safeguard adjoining properties and demolished immediately and to be reconstructed thereafter"*.

5. Thus, it is clear that TAC has also considered the option, as given by the appellants, as to whether repairs can be carried out to the suit building without vacating it. However, on the basis of its own inspection and on the basis of report of the Consultant and Test Reports categorically came to the conclusion that the suit building is beyond stage

of repairs and need to be demolished for the purpose of reconstruction.

6. In view thereof, in my considered view, the trial Court has rightly rejected the relief of interim injunction, as claimed by the appellants, restraining Municipal Corporation from taking any action, in pursuance of the impugned notice dated 28.5.2014 issued to them. It is not only in the interest of appellants that they should vacate the suit building immediately but also in the interest of the persons residing nearby and passersby as collapse of building on the account of its dangerous and dilapidated condition is likely to result to the loss of lives, coupled with the damage to the property. Therefore, neither the appellants have any prima facie case nor balance of convenience lies in their favour.

7. Respondent corporation has categorically stated that the appellants will be provided alternate accommodation till the work of reconstruction is completed. It may be true that, some inconvenience is likely to be caused to the appellants in shifting from the area of Ismail Curtey road, Mumbai to Kurla. However, that inconvenience is not such as to outweigh the irreparable loss and inconvenience, if they do not have vacate the suit structure.

8. A a result of the above discussion, it has to be held that the appeal holds no merit. Hence stands dismissed.

9. At this stage, learned counsel for the appellants requests that the respondent corporation may be directed to give sufficient time to appellants to shift to alternate accommodation. Learned counsel for respondent-municipal corporation submits that two weeks time will be given to the appellants for vacating the suit building and for shifting to alternate accommodation.

10. In view thereof, both, the appeal and the civil application stand dismissed.

[DR. SHALINI PHANSALKAR JOSHI, J.]