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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1203 OF 2015
IN
NOTICE OF MOTION NO.3139 OF 2015
IN
L.C. SUIT NO.1386 OF 2015
WITH
CIVIL APPLICATION NO.1522 OF 2015
IN
APPEAL FROM ORDER NO.1203 OF 2015.

1. Ansari Mohd. Tahir Mohd Sadique]
   age: 61 years, Occn. Business,]
   r/o Lambi Cement Chawl, Byculla Station Road]
   Room No.78, Basement,]
   Mumbai 400 011.]
   ]
2. Sher Nizamuddin Khan]
   Age 38 years, Occn. Business]
   r/o Lambi Cement Chawl, Byculla Station Road]
   Room No.2, Basement,]
   Mumbai 400 011.]
   ]
3. Mohd. Shafique Tufail Ahmed Ansari,]
   Age 56 years, Occn. siness]
   r/o Lambi Cement Chawl, Byculla Station Road]
   Room No.123, Basement,]
   Mumbai 400 011.]
   ]
4. Abdul Rahim Abdul Raheman Ansari]
   Age 61 years, Occn: Business]
   r/o Lambi Cement Chawl, Byculla Station Road]
   Room No.24, Basement,]
   Mumbai 400 011.]
   ]
5. Zakir Hussain Mohd. Asin Ansari]

Age 43 years, Occn :Business]
r/o Lambi Cement Chawl, Byculla Station Road]
Room No.115, Basement,]
Mumbai 400 011.]
]

6. Sajid Akhat Jamatullah,]
Age 43 years, Occn. Business]
r/o Lambi Cement Chawl, Byculla Station Road]
Room No.154, Basement,]
Mumbai 400 011.]
]

7. Khalil Ahmed Shaikh]
Age 35 years, Occn. Business]
r/o Lambi Cement Chawl, Byculla Station Road]
Room No.109, Basement,]
Mumbai 400 011.]
]

8. Iqbal Ahmed Ansari,] Appellants
Age 57 years, Occn. Business] Original
r/o Lambi Cement Chawl, Byculla Station Road] Plaintiffs.
Room No.100, Basement,]
Mumbai 400 011.]
]

9. Ansari Shafique Ahmed]
Age 50 years, Occn. Business]
r/o Lambi Cement Chawl, Byculla Station Road]
Room No.133, Basement,]
Mumbai 400 011.]
]

10. Shakeel Abdul Qadir Shaikh]
Age 28 years, Occn. Business]
r/o Lambi Cement Chawl, Byculla Station Road]
Room No.147, Basement,]
Mumbai 400 011.]
]

11. Usman Gani Shafatullah Sheikh]
Age 37 years, Occn. Business]
r/o Lambi Cement Chawl, Byculla Station Road]
Room No.156, Basement,]
Mumbai 400 011.]
]

12. Asif Ahmed Abdul Sattar Ansari]
Age 37 years, Occn. Business]
r/o Lambi Cement Chawl, Byculla Station Road]
Room No.68, Basement,]
Mumbai 400 011.]
]

13. Khalid Mohd. Saleh Ansari]
Age 46 years, Occn. Service]
r/o Lambi Cement Chawl, Byculla Station Road]
Room No.64, Basement,]
Mumbai 400 011.]
]

14. Moqeetur Rehman Abdul Wahid Ansari]
Age 49 years, Occn. Business]
r/o Lambi Cement Chawl, Byculla Station Road]
Room No.122/98, Basement,]
Mumbai 400 011.]
]

15. Mohd. Akhtaque Siddique Sheikh]
Age 347 years, Occn. Business]
r/o Lambi Cement Chawl, Byculla Station Road]
Room No.2, Basement,]
Mumbai 400 011.]
]

V/s.

1. The Municipal Corporation of Greater Mumbai]
a Body incorporated under the provisions of]
Mumbai Municipal Corporation Act,]
having its office situated at Mahapalika Bhavan]
Mahapalika Marg, For Mumbai 400 001.] Respondents
] Original
2. Assistant Commissioner,] Defendants.
Mumbai Municipal Corporation of Greater Mumbai]
"E" ward, Sankali Street, Mumbai 400 008]

Mr. Vihil Dhoka, a/w Ms. Anisha Singh, I/by Solicis Lex, for the Appellants.
Mr. Pradeep Thorat a/w Mrs. Madhuri More, for the Respondent Corporation.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 04th OCTOBER, 2016.

ORAL JUDGMENT. :

1. Heard learned counsel for the parties.

2. Admit.

3. With the consent of learned counsel for both the parties, the appeal is heard finally at the stage of admission itself.

4. This appeal is preferred by the original plaintiffs as the Notice of Motion No.3139 of 2015 in L.C. Suit No.1385 of 2015, came to be dismissed by the City Civil Court, vide its order dated 28.9.2016.

5. Facts of the appeal are to the effect that the appellants are residing in the Lambi Cement Chawl. There are in all 223 huts which are occupied by them in their capacity as tenants of respondent-Municipal Corporation. According to appellants, in the year 2007, major repair work of the said chawl was carried out and as a result thereof, the condition of the suit structure is stable and good. Despite that, in the month of November, 2013, the Officers of the Municipal Corporation inspected the

strength of the suit structure, took some photographs and thereafter in June, 2014, displayed a blackboard on the suit premises stating that the suit structure is in dilapidated condition. Thereafter on 11.6.2015, the Officers of the Municipal Corporation again visited suit premises and threatened the appellants that the electricity and water connection of the said premises along with other essential services would be disconnected. The appellants are, therefore, constrained to approach the trial Court and the only relief claimed in the plaint is that the respondent corporation be restrained from disconnecting basic amenities such as water and electricity, without due process of law.

6. Along with suit, the appellants also prayed for relief of interim injunction by filing of Notice of Motion, contending inter alia that they have formed co-operative society, namely, Al me CHS Members, for the purpose of carrying out development of the suit property. They had also issued notice in the newspaper dated 18.6.2015, for the purpose of redevelopment of the suit building. According to them, in view of these facts also and considering that the appellants themselves are ready for the redevelopment of the suit property, respondent Municipal Corporation herein be restrained from taking any action like disconnection of the essential supplies to the suit building

7. This Notice of Motion came to be resisted by the Municipal Corporation, by submitting inter alia that as per the report of Technical Advisory Committee (for short referred as, “TAC Committee”) and the Structural Audit Report, building is declared as extremely dilapidated and unfit for human habitation. The said building is declared as of C-1 category and accordingly in its meeting dated 8.5.2015, a decision was taken by the TAC Committee to take immediate action against suit building by vacating the same so as to demolish it. It is submitted that the suit building is constructed about 90 years back and there are in all 224 tenants in the said building. It is further submitted that as per letters dated 11.5.2015, 21.6.2015, 23.7.2015, tenants of the building, requested respondent Municipal Corporation that they are in the process for redevelopment and sought time to vacate the building. As despite sufficient time being given, the appellants and the tenants in the building failed to make progress in their project of redevelopment, the impugned notice was issued to them calling upon them to vacate the suit premises. They were also informed by the said notice to shift to the temporary accommodation provided to them and as descried in the above notice.

8. Thus, according to respondent Municipal Corporation, the

residence or occupation of the appellants in the said building is not only dangerous and hazardous to appellants but also to the lives of other persons residing nearby and passersby. Hence, the suit building needs to be demolished forthwith and for that purpose needs to be vacated and consequently electricity and water supply needs to be disconnected.

9. On this Notice of Motion, the trial Court heard learned counsel for the parties and after considering in detail the documents produced on record by them, also having regard to the order passed by this Court in Writ Petition (L) No.1135 of 2014 giving directions and laying down the guidelines to be followed in case of building which has become dilapidated and to which Notice under Section 354 is issued, trial Court held that appellants have prima facie no case to get relief of injunction as claimed by them to protect their possession or to ask for stay to the disconnection of essential supplies.

10. This order of the trial Court is challenged in this appeal by learned counsel for appellants by submitting that the trial Court has not considered the fact that respondent Municipal Corporation has not followed due process of law while taking action against the suit structure or against the appellants. By placing reliance on the judgment of Apex

Court in case of, **State of Punjab and anr -vs- Brijeshwar Singh Chahal and anr,** in Civil Appeal No.3194 of 2016 dated 30th March, 2016, particularly paragraph No.16, it is urged that by now it is fairly well settled that not only the Government but all public bodies are trustees of the power vested in them and custodians of public interest. Discharge of that trust in the best possible manner is the primary duty of those in charge of the affairs of the State or public body and hence they have to act fairly and reasonably, which is facet of law.

11. Here in the case, it is submitted that the impugned notice which was issued to the appellants, calling upon them to vacate the premises in their possession and to shift to the alternate accommodation was not duly served on them and therefore, the Municipal Corporation has not followed due process of law. On this count, the action proposed to be taken by the Municipal Corporation needs to be stayed

12. In the instant case, minutes of the meeting of TAC Committee are produced on record which reveal that the suit building was visited by the Municipal Commissioner on 28th April, 2014 alongwith other members of the TAC and representatives of consultants M/s Infra Consultants. TAC also considered the report of Structural Engineer, namely, M/s Rehab

Consultants Pvt. Ltd., who was appointed by the tenants - appellants. On the basis of the same, it was considered by the TAC whether the repairs can be carried out to the suit building instead of ordering demolition of the same. It was further considered in the said meeting that report of M/s. Infra Consultants clearly showed that they had carried out specified tests as directed by the Division Bench of this Court, in the order passed in WP No.1135 of 2014. As against it, Structural Consultants M/s Rehab Consultants Pvt. Ltd appointed by the tenants had not carried out any test and had submitted report only on the basis of visual inspection. In view thereof, report submitted by M/s Infra Consultants which was based on the specific tests carried out was relied upon. Thereafter, visual inspection of the said building was conducted by the members of TAC themselves and it was held that the building is in extremely dilapidated condition and is unfit for human habitation. Repair work, suggested by M/s Rehab Consultants Pvt. Ltd, was not possible, as even after the repairs, proposed increase in life of building is only 3 to 4 years. Hence it was decided to take immediate action against extensions carried out by the tenants which was imposing additional load to the structure making it dangerous. It was also recommended that earlier decision of TAC Meeting held on 8.05.2014, to immediately vacate the building and demolish the same remains unchanged. Necessary propping arrangement shall be

provided immediately for pulling down the suit building.

13. The report of TAC thus, reveals that directions given by Division bench of this Curt in Writ Petition were followed and thereafter only evacuation of the building for the purpose of its demolition was directed. Submission of learned counsel for appellant is that as the building was not classified in the category of “C-1” and therefore, no such action of demolition can be taken. In this respect, learned counsel, for appellants, has placed reliance on paragraph No.9-A of the judgment of this Court in **Mumbai Municipal Corporation -vs- State of Maharashtra and ors, in Writ Petition (L) No.1135 of 2014**. The relevant portion is as follows :-

> “9 (a) The present order will be applicable only in respect of those buildings which are highly dilapidated and dangerous and/or classified in Category C-1 by the Corporation, whether owned by a private party or by the Corporation or any other authority and in respect of which building, either a notice under section 354 has been issued or the Corporation has issued a Letter of Evacuation to their tenants and/or occupiers of the buildings”

14. Perusal of this paragraph, in my considered opinion, clearly reveals that guidelines issued by the Division Bench of this Court are not

only applicable to those buildings which are classified in category C-1 by the Corporation, but also to those buildings in respect of which either Notice under Section 354 has been issued by the Corporation or the Corporation has issued letter of evacuation to their tenants and/or occupiers of the buildings. Hence merely because it is not stated in the TAC Committee Meeting that the building is declared as C-1, considering the fact that notice under Section 354 was issued and structural consultant was appointed, both by the appellants tenants and also by the Municipal Corporation and on the careful analysis of the same, experts have taken decision that the building needs to be demolished as the repairs thereon are not possible as it has become dangerous and hazardous to the occupants and persons residing nearby is sufficient for evacuation of appellants. It cannot be said that the Corporation has not followed due process of law in this respect.

15. It is also pertinent to note that the Municipal Corporation has issued letters to the appellants and other tenants calling upon them to vacate the premises in their possession and temporarily shift to the premises as mentioned in the said notice. Therefore, all the precautions and all the conditions which are laid down, are fulfilled by respondent Municipal Corporation by providing alternate accommodation to the appellants.

Whether the notices were served or returned unserved, the fact remains that the appellants had not only knowledge of that notice but they were also aware that the board was displayed on the suit property stating that it was hazardous and dangerous. Not only that, the letter was given on 11.5.2015 by tenants of the said building, requesting Municipal Corporation that till month of Ramzan is over, the action should not be taken. If despite all these facts, appellants are persistent in continuing to reside in the suit premises, that too, to the danger of their lives and property, then it has to be held that said danger is not only to their lives and property, but also to the persons residing nearby and passersby. In such circumstances, simpliciter relief of injunction restraining respondents from taking any action of disconnection of electricity and water supply and allowing appellants to reside in the said building which has already become dilapidated and hazardous, has been rightly rejected by the trial Court. Absolutely no reason or case is made out by the appellants to interfere in the discretion exercised by the trial Court. Appeal, therefore, holds no merit. Hence, stands dismissed.

16. At this stage, the request is made by learned counsel for appellants that the order of status quo granted by this Court be continued for a period of four weeks. Learned counsel for respondent-corporation

takes strong objection thereto and in my considered opinion, rightly so. Since 2014, appellants have continued to reside in the suit premises which has already become dangerous and hazardous.

17. Hence, having regard to the damage and loss, which is likely to be caused to human lives and property, no further protection can be granted or extended; especially, when it is in the interests of appellants themselves that they vacate the suit building. It is also not that they will become shelter-less, as the respondent-Municipal Corporation has already allotted them alternate premises. Hence, the request for extending the order of status-quo is also rejected.

18. Appeal and Civil Application, accordingly, stand disposed of finally as dismissed, with no order as to costs.

[DR. SHALINI PHANSALKAR JOSHI, J.]