

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

WRIT PETITION NO. 986 OF 2015

M/s. Danish Construction Company
Through its Partners.

... Petitioners.

V/s.

Mr. Kanu Gangaram Bhuwad & 18 Ors.

... Respondents.

With
WRIT PETITION NO. 4260 OF 2015

Kalyan Dombivali Municipal Corporation
and Another.

... Petitioners.

V/s.

Mr. Kanu Gangaram Bhuwad (deceased)
Per LR Mr. Ashish Kanu Bhuvad & Ors.

... Respondents.

Mr. Ram Apte, Senior Advocate a/w. A.A. Garge i/b. Kashyap
Bhalerao for the Petitioners in WP 986/15.

Mr. A.S. Rao for the Petitioners in WP 4260/15.

Mr. Panchapansingh Gusign for Respondents 1,2,4 to 12, 14 to 16,
18 and 19 in both Petitions.

CORAM : N.M. Jamdar, J.

25 October, 2016.

Oral Order :-

These two Petitions arise from the same suit and have challenged the same impugned orders and therefore they are taken up together for consideration.

2. Writ Petition No. 986 of 2015 is filed by M/s. Danish Construction Company and Writ Petition No. 4260 of 2015 is filed by the Municipal Corporation of Kalyan Dombivali.

3. A Regular Civil Suit No. 252 of 2013 is filed by the Respondents – 19 Plaintiffs. The Suit was initially filed against the Municipal Corporation of Kalyan Dombivali for relief of injunction in respect of a notice issued by the Municipal Corporation on 6 April 2013 under Section 263 of the Maharashtra Municipal Corporation Act. It is the case of the Respondents – Plaintiffs that the Municipal Corporation is acting malafide and when the building in which they are staying is sound, a notice has been issued on the ground that the building is dilapidated and required to be demolished. The developer – Danish Construction Company has found itself as a defendant in the Suit. In the suit an application for temporary injunction was taken out below Exhibit 5. The learned Civil Judge, by order dated 2 January 2014 rejected the application for temporary injunction. Misc. Civil Appeal was filed by the Respondents – Plaintiffs in the District Court, Kalyan. The learned District Judge, by the impugned order dated 14 November 2014 allowed the

Appeal and restrained the Defendant – Corporation, their agents, servants, contractors or any other person on their behalf from demolishing the suit property from taking any action till the decision of the suit.

4. Heard the learned Counsel for the parties.

5. The learned Senior Advocate for the developer M/s. Danish Construction Company submitted that the Plaintiffs had agreed to vacate the premises and had signed agreements with the Petitioner – developer and without joining the developer, the suit was filed and thereafter, the Petitioner – developer has joined itself in the suit. It was submitted that the Respondents – Plaintiffs have accepted the position in the agreements that the premises have become weak and therefore, when this fact was suppressed, injunction ought not to have been granted.

6. I have considered this contention. The suit is filed to challenge the action of the Municipal Corporation seeking to demolish the building pursuant to the notice under Section 282 of the Maharashtra Municipal Corporation Act. That is the limited relief sought for in the suit. As far as the dispute between the Petitioner – developer and the Respondents – Plaintiffs is concerned, the learned District Judge has rightly held that this dispute and the relationship is not within the ambit and scope of the suit and the

Petitioner – developer can take recourse of law against the Plaintiffs in respect of the agreements. The injunction that is granted is also to restrain the Municipal Corporation and their agents, servants and contractors, etc. Therefore, it is clear that the order of injunction is only in respect of the notice of demolition issued by the Municipal Corporation and the consequences that may ensure therefrom. The learned District Judge has already made it clear that the rights of the Petitioners – developer under the agreement stated to be executed are not affected by the order of injunction. In view of this clarification already given in the impugned order, it is not necessary to interfere with the impugned order at the behest of the Petitioner – developer.

7. As far as the Petition filed by the Municipal Corporation is concerned, the learned Counsel for the Petitioner – Corporation submitted that the Officer of the Municipal Corporation visited the site and an engineer on the panel had submitted a report on 28 March 2013. It is stated that based on their visit and the report of the structural engineer, notices have been issued. The copy of the report is placed on record. The learned Counsel for the Respondent submitted that the report is not inconsonance with the statutory requirement engrafted under the Maharashtra Municipal Corporation Act.

8. The learned District Judge after considering the material on record and report of the structural engineer appointed by the Respondents – Plaintiffs and upon consideration of the material produced by the Petitioner has come to the conclusion that it cannot be said that the building has become so dilapidated though it needs to be pulled down. The report of the structural engineer Nayan Dholakia is placed on record. The report is shockingly casual. The report has only summarized the situation in few lines and states that in the opinion of the structural engineer, the structure needs to be pulled down. The detailed scrutiny and verification is necessary when building is sought to be pulled down, especially when the allegations are made that the Municipal Corporation is acting in collusion with the developer. The Municipal Corporation ought to have called for an explanation from Mr. Nayan Dholakia for submitting such casual report. Instead of calling for an explanation, this casual document has been made on the basis of the action.

9. As far as the contention of the learned Counsel for the Petitioner – developer that the Respondents – Plaintiffs have agreed in their agreements that buildings have become weak, there is a difference between buildings which need to be re-developed and buildings which need to be pulled down having been become dangerous for habitation. Admission of the fact that the building need to be re-developed does not automatically translate into an

admission that the buildings have become dangerous for habitation. No error can be found in the view taken by the learned District Judge after assessment of evidence. No interference is required in both these Writ Petitions and the same are accordingly rejected.

10. The Registry shall send the copy of the order to the Commissioner of Kalyan Dombivali Municipal Corporation to be served on him personally, who will seek an explanation from Mr. Nayan Dholakia, the Chartered Engineer and Government Approved Valuer as regard the report that is submitted and take suitable action thereupon.

11. It is clarified that the observations made in this order and both the impugned orders are prima-facie, except the directions to the Commissioner regarding the Structural Auditor's Report. The suit will be tried on its own merits. It is open to the parties to make a request to the learned Civil Judge for early disposal of the suit. It is also clarified that the rights of the Petitioner – developer and its dispute with the Respondents – plaintiffs is not the subject matter of these proceedings and it is open to the Petitioner – developer to take steps as per law.

(N.M. Jamdar, J.)