

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1182 OF 2016
WITH
NOTICE OF MOTION NO. 257 OF 2016

Shri Manish Pravinchandra Shah and anr. .. Petitioners

Vs.

Asstt.Engineer (B&F), 'N'Ward and ors .. Respondents

Mr.Kishor Patil a/w Mr.Rajeev Matkar, for the Petitioners.
Mr.M.A.Sayed, AGP for Respondent No.3.
Ms.Geeta Joglekar, for BMC.

CORAM : SHANTANU.S.KEMKAR &
M.S.KARNIK, JJ.
DATE : 14th JUNE, 2016

P.C. :

. Heard the parties through their Counsel. On 04/03/2016, this Court clarified that the action of demolition on the part of the Municipal Corporation on the basis of the notice dated 04/08/2010 under Section 354 of the Mumbai Municipal Corporation Act, 1888 (for short 'Act') can be taken by the petitioners provided there is no restraint order in respect of the said notice by any Court of competent jurisdiction. It is

not in dispute that there is no any restraint order in respect of demolition notice issued under Section 354 of the Act. It is also not the case of the Corporation that the said notice has been withdrawn by it. We have also been informed that about 40% of the structure has already been demolished and the rest of the structure has not been demolished either by the petitioners or by the Corporation as well. In view of the aforesaid, in terms of clause 2 of the notice dated 05/09/2014 – Exhibit 'B' issued by the Municipal Corporation under Section 489(1) of the Act in which it has been categorically stated that if the petitioners fail to comply the said notice within the prescribed time limit, MCGM will be constrained to utilize police force to remove the petitioners from the premises and the said building will be demolished without giving further notice entirely at the risk, cost and consequences of the petitioners. Since we find that the petitioners have not yet demolished the remaining part of the building nor the Corporation has taken any steps in pursuance of the said notice, we dispose of the Petition by giving 15 days time from today to the petitioners to demolish the remaining

structure failing which the Corporation shall demolish the remaining structure of the said building at the risk, cost and consequences of the petitioners. The Corporation shall start the demolition if the petitioners fail to demolish the structure within 15 days, immediately from the 16th day from today. So far as the rights of the tenants of the building in question are concerned, the same is left open and to be decided in appropriate proceedings, if so advised.

2. We have also been informed that since earlier 40% demolition was not carried out by the petitioners as per the requirement of law, notice of stop work was issued to the petitioners. The petitioners will comply with the requirement of demolition and shall take necessary steps as required for the same. We are permitting the petitioners to carry out further demolition within 15 days as already stated, failing which the Corporation to start demolition as stated above from 16th day. We also record the statement of the petitioners that the entire cost of demolition and removal of debris etc. shall be borne by the petitioners if the Corporation is required to demolish the

structure and petitioners shall deposit the amount as may be quantified by the respondent – Corporation within a week from the day of such demand. The petitioners to file an undertaking before this Court in this regard within a week from today.

3. The Petition is disposed of in the above terms. In view of disposal of the Writ Petition, Notice of Motion does not survive and the same is also disposed of accordingly.

(M.S.KARNIK, J.)

(SHANTANU.S.KEMKAR, J.)