

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1141 OF 2016

Smith Buildcon and Another

...Petitioners

vs.

Municipal Corporation of Greater
Mumbai and Others

...Respondents

Mr. Nishit Shashidharan a/w. Ms. Sarika Mehra i/b. L.T. Law, for the
Petitioner.

Ms. Shaila Pandey, for Respondent Nos. 12, 14, 20, 24, 26, 32 and 34.

Mr. Nikhil Salian i/b. Mr. Ritesh Jain, for Respondent Nos. 10, 13, 16,
17, 18, 19, 22, 25, 29 and 31.

ORDER RESERVED ON : 22ND JULY, 2016

ORDER PRONOUNCED ON : **26TH JULY, 2016**

CORAM : SHANTANU KEMKAR &
MAKARAND KARNIK, JJ.

ORAL ORDER:

With the consent of the learned counsel for the parties,
the Petition is heard finally.

2. This Petition under Article 226 of the Constitution of India
has been filed seeking direction to Respondent Nos. 1 to 4 -Municipal
Corporation of Greater Mumbai to demolish the structure which has
been already held to be in dilapidated condition and for which the
Municipal Corporation has issued notice on 30th March, 2013 under
Section 354 of the Mumbai Municipal Corporation Act, 1888.

3. The grievance of the Petitioners is that in spite of the fact that the Petitioners' building known as “*Swapna*” building situated at P. M. Road, Vile Parle (East), Mumbai has been held to be in dilapidated condition and is likely to fall being dangerous and notice to that effect has already been issued, the Corporation is not taking any further steps in respect of the said notice to proceed to its logical end. It is the case of the Petitioners that as the occupants of the said building-Respondents had disputed the said notice of the Corporation, the matter was referred by the Corporation to the Technical Advisory Committee (TAC) constituted in view of the direction issued by this Court in the case of “*Municipal Corporation of Greater Mumbai vs. State of Maharashtra and Others*” in Writ Petition (L) No. 1135 of 2014 dated 23rd June, 2014. The said Committee after examining the reports which were in favour of the Petitioners and against the private Respondent/Occupants, after complying the direction contained in the said order passed by the Division Bench, recorded the conclusion which reads thus:

“In this case, TAC meeting was held on 02/07/2015, which was attended by both the structural consultants. The reports of both the consultants and their opinion in the meeting was taken on record. K/East ward staff have

inspected the site and observed that there is heavy vegetation on the building. Further the Chajjas, columns, beams are in worst condition, however, 27 tenants are staying in the building. Reinforcement is exposed and corroded. Overall the building is in dilapidated condition and needs to be evacuated and demolished, hence TAC neither felt necessary to carry out N.D test separately nor visit the site. It is also informed by the B.P staff that the IOD has been issued in this case.”

4. The grievance of the Petitioners is that in spite of the said report which was submitted by TAC, as per the decision dated 2nd July, 2015 the Corporation except issuance of notice dated 29th February, 2016 (Exhibit “Y”) has not taken any further steps. In the circumstances, the Petitioners have filed this Petition.

5. The learned counsel appearing for the Corporation submits that the Corporation shall take necessary steps in regard to the aforesaid TAC report and its notice for demolition. The learned counsel for the private Respondents did not dispute that the building is in dilapidated condition and it requires to be demolished. They further submits that the Petitioner needs to provide an alternate accommodation to occupants and to rehabilitate them.

6. The learned counsel for the Petitioners submit that the Petitioners have already accommodated the other occupants of the building and the present Respondents shall also be appropriately accommodated as per their entitlement.

7. Having considered the submissions made by the learned counsel for the parties, we find that there is no dispute that the building requires to be demolished as the same is in dilapidated and dangerous condition. In the circumstances, in view of the law laid down by the Division Bench of this Court in the case of “Tadeshwar Wadi Co-operative Housing Society Ltd. vs. State of Maharashtra and Others”¹ as also in the case of “Whiz Enterprises Private Limited vs. State of Maharashtra”², the Corporation is required to be directed to take notice issued under Section 354 of the Act to its logical end in accordance with law. In view of the aforesaid, we dispose of this Petition by directing the Corporation to take the notice issued by it under Section 354 of the Act to its logical by demolishing the dangerous structure in question. We also direct that the officers of the Corporation to discharge their duty with the help of the police

1 2013(3) Bom. C.R. 79

2 2009 B.C.I. (soft) 520.

authority and the police authority would extend an adequate logistic support to them if demanded and as may be warranted which is the obligation of the police authority under Section 520 of the Act.

8. Accordingly we allow the Petition and direct the Corporation to act upon the notice issued by it under Section 354 of the Act in accordance with law and in doing so may take assistance of the local police authority and the police authority to provide all the logistic support to the Corporation. As regard the rehabilitation of the Respondents-occupants, we record the stand taken by the Petitioner as recorded in paragraph 6 of this order. It is further made clear that in the event of their dissatisfied with the rehabilitation offered by the Petitioners, the occupants shall be entitled to claim their rights before the appropriate Forum in accordance with law.

9. The Petition stands disposed of as such.

(M.S. KARNIK, J.)

(S.S. KEMKAR, J.)

10. At this stage, the learned Counsel appearing for the Respondents-occupants of the building made request that the Respondents-occupants of the building be granted three weeks time to vacate the premises as they have to find out the suitable accommodation. To this prayer, the learned Counsel for the Petitioners as also the learned Counsel for the Corporation raised objection. Having considered the submissions made by the learned counsel for the parties, we accede to this prayer made by the occupants and grant three weeks time to the Respondents-occupants to vacate the premises in question. The Respondents-occupants to file fresh undertaking within a week to the effect that they will peacefully vacate the premises in question within three weeks from today and they shall stay in the premises in question at their own risk. Needless to say that if they fail to vacate the premises in question after three weeks, the Petitioners, Corporation as also the police to act in terms of the order passed by this Court.

11. At this stage, it has also been prayed by the Respondents-occupants that this order may not affect their claim made in the Civil Suit No. 2117 of 2015 pending in the City Civil Court at Dindoshi

claiming title of the property in question. To this, it is suffice to say that the subject matter of the Suit being different, we need not to say anything in that regard. The trial Court shall decide the Suit on its own merits and in accordance with law.

(M.S. KARNIK, J.)

(S.S. KEMKAR, J.)