

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

WRIT PETITION NO. 3941 OF 2017

Shri. Madangopal Shankarlal Panchariya
& Anr.

....Petitioners

Versus

Dharamchand Shivanand Nimani
& Ors.

...Respondents

.....

Mr. Ashok B. Tajane for the Petitioners.
Mr. Suhas S. Inamdar for Respondent Nos. 1 to 5.
Mr. D.G.Dhanure for Respondent No.6 (Corporation)

.....

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: APRIL 25, 2017

P.C. :

1. This petition filed under Article 227 of the Constitution of India is directed against the order dated 16.12.2016 passed by the learned 5th Jt. Civil Judge Junior Division, Solapur in Regular Civil Suit No. 874 of 2016 and the order dated 13.01.2017 passed by the learned Ad-hoc District Judge 4, Solapur in Civil Miscellaneous Appeal No. 163 of 2016.

2. The petitioners/ plaintiffs are the tenants in the suit premises and respondent nos. 1 to 5 are the landlords and respondent no.6 is a Corporation i.e Solapur Municipal Corporation. It is the case of the petitioners/ plaintiffs that they are occupying their respective tenements in the building against which the notice is issued. Hence, this Writ Petition.

3. The learned counsel for the petitioners has submitted that the Civil Suit was filed by the petitioners alongwith other plaintiffs against Notice No. 126 dated 04.04.2016 issued under section 268 (1) of the MMC Act. The learned trial Judge has dismissed the Suit. In the said Suit, the application under Exhibit 5 for interim relief was moved. The said application was dismissed against which the Civil Miscellaneous Appeal No. 163 of 2016 was preferred by the petitioners. The said appeal was also dismissed.

4. The learned counsel for the petitioners has relied and pointed out the guidelines which are laid down in the order dated 23.06.2014 of the Division Bench of this Court in Writ Petition (L) No. 1135 of 2014 when the notice under section 354 of the Mumbai Municipal Corporation Act, 1888 is issued in respect of the dangerous structures. Under this direction, the Division Bench has protected the rights of tenants in the buildings which are going to be demolished and the new buildings which are going to be constructed in the same place. He has further relied on GR dated 05.11.2015 issued by the Urban Development Department. He has submitted that the Corporation and the landlords have violated the directions laid down in the order of Division Bench and also the GR. The Corporation was bound by the order of the Division Bench and ought to have carried out the structural audit of the suit building. Without carrying out the structural audit of the building, a notice was given and the building is partly demolished. He has further submitted that the petitioners who are the tenants were living in the said building since many years are entitled for protection under this direction.

5. The learned counsel for respondent nos. 1 to 5 i.e. the landlords and the learned counsel for the Corporation i.e. respondent no.6 while opposing this petition have submitted that the site inspection is carried out by the Corporation and therefore, a notice was issued. The learned counsel for the Corporation has submitted that a notice was issued on 04.04.2016. The petitioners could not get any protection from the trial Court as well as the Appellate Court and therefore, this petition is to be dismissed. He has further submitted that the petitioners cannot ask for protection of their tenanted rights, as there is no specific pleading and tenancy rights cannot be decided in the suit to that effect in the plaint.

6. I have perused the orders of the Courts below giving concurrent findings. In view of the concurrent findings and the notice of demolition issued by the Corporation and so also as on today, the building is partly demolished, the demolition cannot be stayed. At this stage, an order can be passed only consistent with the GR dated 05.11.2015 issued by the Urban Development Department of the Government of Maharashtra. It appears that the petitioners are residing in their respective tenements in the suit building. It is a duty of the Corporation to follow the guidelines given by the Government in their GR dated 05.11.2015. In the said GR, the Government has directed that the Corporation to classify the dilapidated buildings in different categories before vacating their respective premises/ tenements. The Corporation to measure the carpet area which is in possession of each occupier, tenant, owner and co-operative society and thereafter the

certificate is required to be issued by the Corporation to that effect. There are directions given in respect of the building owned by the Corporation also, however, the present building is a private building owned by respondent nos. 1 to 5. In view of this, the present petition is disposed off with following directions:

- (a) The Corporation shall carry out the measurements of the carpet area of each of the tenant/ occupier in the suit building and accordingly clear certificates mentioning the area, tenement occupied by them and their names is to be given to them.
- (b) These measurements are to be carried out on or before 05.05.2017 and also issue certificates till 05.05.2017. It is specifically directed that under no circumstances this work is to be delayed.
- (c) The landlords to pay the expenses of this demolition.

7. The learned counsel for the petitioners make a statement that thereafter immediately the petitioners shall vacate their respective premises and hand over the possession on 10.05.2017.

8. In the absence of any prayer in respect of the tenancy rights, no further order can be passed at this stage. The petitioners may file a suit to protect their tenancy rights in the light of the directions given by the Division Bench of this Court in Writ Petition No. 1135 of 2014 and liberty is granted.

(MRIDULA BHATKAR, J.)