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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 848 OF 2015
WITH
CIVIL APPLICATION NO. 1044 OF 2015

Himmat Mansion CHS Ltd & Ors	...Appellants
<i>Versus</i>	
Municipal Corporation of Greater Mumbai	...Respondent

None for the Appellant.
Mrs Madhuri More, for the Respondent-MCGM.

CORAM: G.S. PATEL, J
DATED: 19th June 2017

PC:-

1. This is an Appeal against the refusal of ad-interim relief on 22nd June 2015. None appears for the Appellants.

2. I am, in any case, satisfied that there is no cause for interference with the order under Appeal.

3. The Plaintiffs challenged a notice issued by the Municipal Corporation of Greater Mumbai under Section 354 of the Mumbai Municipal Corporation Act and other notices under Section 488 as also the advice issued by the Technical Advisory Committee. It

seems that the Plaintiffs' previous managing committee itself applied to the Corporation for a declaration that the suit structure was dilapidated. This was in 2013 and is noted in paragraph 5 of the impugned order. The management changed and with it the approach. The new management then contended that the building was not dilapidated and could be repaired. Its own reports, however, indicated that this report would not be of any lasting value and would at best enable the building to stand for just a few more years.

4. In the meantime, the MCGM obtained a structural reports to the contrary and the Technical Advisory Committee also opined that the building was in need of reconstruction.

5. It was in this state of circumstances that the Trial Judge declined ad-interim reliefs and in my view quite correctly.

6. Aggrieved by this, the Plaintiffs came in Appeal and on 2nd July 2015 there was an order of *status quo*. That has continued till today.

7. The Plaintiffs have also filed undertakings saying that they are themselves liable for any mishap, danger of life or property and others and that they are occupying the building at their own risk.

8. It so happens that such *status quo* orders, meant to continue only for a short time, then last much beyond their intended lifespan. The result, unfortunately, is that the order under appeal is effectively negated without an assessment on merits. Even more

significant is the fact that our orders then tend to permit dilapidated buildings to continue, with exponentially increased risk. It is not every matter that requires a reference to the TAC. It does sometimes happen that buildings that are not genuinely dilapidated are attempted to be shown as such. But equally there are many cases where buildings that are truly dilapidated and pose a very great, real, clear and present danger not only to occupiers but to others including the public and passers-by are allowed to continue because of these disputes and holding orders. The undertakings ordered to be given by the occupants will not in themselves prevent the loss of life and property; they only make the occupants/appellants liable *after* the loss.

9. Indeed it seems to me this case is one where allowing undertakings to continue will not suffice. It was the Plaintiffs' own previous committee that took the view that the building was dilapidated and it did so on the basis of cogent material. There is also the fact that this matter has now been pending before the Corporation for four years. The building has been subjected to the ravages of annual monsoons in that time. There seems to be internal dissension within the Plaintiff Society and the new management seems to be reversing the stand taken by the previous management. The result is that the Plaintiff-Society itself is taking contrary stands. The report relied on by the Plaintiffs was also outdated.

10. In the impugned order the Trial Court gave three clear and cogent reasons to decline relief. These are set out in paragraph 5. First, it noticed the inconsistent stands by the Plaintiffs. Then it noted that the Plaintiffs' report was old and did not say that the

building if repaired would last for any appreciable period of time. Given the age of the report it was not possible to assess the current structural condition of the building. Third, even the TAC concluded and that too only about six months before the impugned order that the building was in a dangerous condition.

11. In these circumstances, I do not see how the impugned order can be faulted in any manner. Given the material before it, indeed, any other view would have suffered from legal perversity. In my view, the learned Judge correctly assessed the situation, balanced equities as also, even if this is not explicitly stated but is only implicit, the larger public interest, and then made the only order possible.

12. There is also no explanation for the Appellants' absence in Court today. The Appeal is dismissed. There will be no order as to costs.

13. The ad-interim order granted earlier is vacated.

14. The Civil Application does not survive and is disposed of as such.

(G. S. PATEL, J)