

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (St.) No. 23086 OF 2017
WITH
CIVIL APPLICATION No. 731 OF 2017 IN A.O. (ST.) No.23086 OF 2017
WITH
CIVIL APPLICATION (ST.) No. 23088 OF 2017 IN A.O. (ST.) No.23086 OF 2017

Bhagwan Shankardas Moorjani	... Appellant/Applicant
Vs.	
The Assistant Commissioner, Municipal Corporation of Greater Mumbai & Ors.	... Respondents

Mr. Bhagwan S. Moorjani, appellant appears in person.
Mrs. Madhuri More, Advocate for the respondents/Corporation.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **18th August, 2017.**

P.C.:

Admit. By consent, the Appeal from Order is heard finally and decided at the stage of admission.

2. This Appeal from Order takes an exception to the order dated 8th February, 2017 passed by the learned Ad-hoc Judge, City Civil Court, Greater Mumbai in Notice of Motion No. 3746 of 2016 in L.C. Suit No. 2251 of 2016 thereby rejecting the Notice of Motion. It is the case of the appellant/plaintiff that the Corporation be restrained from taking action pursuant to the notice issued by the Corporation under section 354 of Mumbai Municipal Corporation Act in respect of the

suit building.

3. The appellant/party-in-person submitted that the trial Court has rejected the Notice of Motion on the ground that the structural audit report of the building was not produced. He submitted that today the appellant is ready with the contradictory report to restrain the defendant/Corporation and it is to be considered. He has further submitted that the building does not fall under “C-1” category and it is not in dilapidated condition. The Corporation has issued this notice under section 354 of Mumbai Municipal Corporation Act. He has further submitted that the guidelines issued by the High Court in Writ Petition (L) No. 1135 of 2014 are not followed. The appellant submitted the he is a member of the Cooperative Society.

4. Per contra, the learned counsel for the Corporation, while opposing this Appeal from Order, has produced a letter/report of the Deputy Chief Engineer (BPES) dated 1st June, 2016. She also produced the photographs showing the present condition of the suit building. She has further submitted that the Corporation has already started demolishing the building. The water and power supply is also disconnected and thus, the building stands without water and

electricity as on today. She further relies on the affidavit-in-reply filed by the officer of the Corporation in this Appeal from Order. She submitted that all the members of the Cooperative Society of the building have vacated their respective flat. The appellant/plaintiff is not the member of the Cooperative Society.

5. Heard the submissions. Considered the documents so also the impugned order. In the guidelines, the Division Bench of this Court has specifically mentioned that it is the Corporation who has to form an objective opinion in respect of structural stability of the building while categorizing it. Thus, as per the guidelines, the Corporation cannot take a side of either of the parties but has to form objective view. There should be some documents to show that the concerned officer of the Corporation had visited the spot along with experts and on examination has arrived at a certain conclusion in respect of structural stability of the building. In the present case, though the plaintiff has produced the report dated 4th August, 2017 stating that the building was falling only under C-2(b) category and only repairs are required, on perusal of the report produced by the appellant before this Court, though the report speaks about the repairs, there is no mention in which category the building falls. As it is held by the

Division Judge of this Court in Writ Petition (L) No. 1135 of 2014 that the Courts are not expert on the issue of structural stability of the building and therefore, the Court cannot challenge the opinion of the expert which is relied by the Corporation but the Court has to see whether that opinion is given objectively or not and it is verified by the concerned officer of the Corporation or not. In the present case, the letter/report dated 1st June, 2016 of the Deputy Chief Engineer (BPES) discloses that he himself has visited the suit building along with the Structural Engineer and staff and has verified the same and made observations. He has put the building in category "C-1" and thus, it is required to be demolished. Similar facts are stated on oath in the affidavit filed by the officer of the Corporation. Further it is to be noted that from 5th August, 2017 onwards the Corporation has started the demolition of the suit building. The photograph produced by the Corporation discloses that some portion of the building is punctured. Thus, the order of the learned Judge rejecting the Notice of Motion cannot be faulted with. Hence, Appeal from Order is dismissed.

6. In view of dismissal of Appeal from Order, Civil Applications do not survive and the same are accordingly disposed of.

7. The appellant/party-in-person prays to stay this order as he wants to challenge it before the Hon'ble Supreme Court.

8. In view of the facts and position of the building, prayer for stay of this order is rejected.

(MRIDULA BHATKAR, J.)