

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

WRIT PETITION NO.9757 OF 2013

Mr. Jaswant Shivlal Chandarana & Anr.	.. Petitioners
Vs	
State of Maharashtra & Ors.	.. Respondents

***WITH
WRIT PETITION NO.4958 OF 2014***

Shri Vasant Shantaram Gupte & Ors.	.. Petitioners
Vs	
State of Maharashtra & Ors.	.. Respondents

***WITH
WRIT PETITION NO.9758 OF 2013***

Mr. Mohhamed Salim Hasmat Chaudhari	.. Petitioner
Vs	
State of Maharashtra & Ors.	.. Respondents

***WITH
WRIT PETITION NO.9759 OF 2013***

Mr. Vipin Harjeevan Parmar	.. Petitioner
Vs	
State of Maharashtra & Ors.	.. Respondents

***WITH
WRIT PETITION NO.9760 OF 2013***

Mr. Kehersingh Kabulsingh	.. Petitioner
Vs	
State of Maharashtra & Ors.	.. Respondents

...

Mr. Rahul Shivaji Kadam for the Petitioners.
Ms. N. M. Mehra, AGP for the Respondent No. 1.
Mr. A. S. Rao for the Respondent Nos. 2 to 4.
Mr. I. M. Khairdi for the Respondent No. 5.

**CORAM : A. S. OKA &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 18/07/2017.

ORAL JUDGMENT (PER: A. S. OKA, J.)

1] Heard the learned counsel appearing for the Petitioners. The learned Counsel appearing for the 2nd to 4th Respondents, the learned AGP for the State and the learned counsel appearing for the 5th Respondent.

2] Rule. Respondents waive service. Forthwith taken up for final disposal.

3] These petitions can be conveniently disposed of by a common order as the same relate to the same building namely Badlapurkar Chawl described in paragraph 1 of the petitions. The challenge in these petitions at the instance of the occupants of the buildings is to the impugned notices issued under Section 268 of the Maharashtra Municipal Corporations Act, 1949 (for short “the said Act”). The said notices proceed on the footing that the subject building is in dangerous and ruinous condition which is required to be demolished. Therefore, the Petitioners were called upon to remove themselves from the building.

4] It appears that the 2nd Respondent – Municipal Corporation relied upon the Structural Audit Report of Shri R. K. Yadav which is dated 19th September 2013 for coming to the conclusion that the building is in ruinous condition. We have perused the said report which is placed on record. From the report, it appears to us that no scientific tests have been conducted by Shri R. K. Yadav for coming to the

conclusion regarding the structural status of the building. The Petitioners are also relying upon certain reports which are filed along with additional affidavits. We have perused the said reports. The petitioner and Municipal Corporation are relying upon reports of the Structural Engineers which show that scientific tests have not been carried out by the consultants before recording their opinion. The 5th Respondent is the owner/landlord of the building. The Petitioners and the 5th Respondent through their learned counsel have agreed that opinion of Shri Kedar V. Kale, Consulting Engineer be sought on the Structural status of the building. The Petitioners and 5th Respondent have agreed to share the costs and expenses of the structural audit work. We may note here that even the Kalyan Dombivli Municipal Corporation is agreeable for appointing Shri Kedar V. Kale to make structural audit of the building. The Petitioners in these petitions and the 5th Respondent will be responsible for payment of charges and expenses to Shri Kedar V. Kale in equal shares.

5] Our attention is invited to a decision of the Division Bench in the case of ***Municipal Corporation of Greater Mumbai Vs. State of Maharashtra and Ors.***¹ The Division Bench was dealing with the provision of Section 354 of the Mumbai Municipal Corporation Act, 1888 which confers power on the Municipal Commissioner to remove or a demolish building which is in dangerous and ruinous condition. The procedure for the exercise of powers under Section 354 is laid down in the said decision. The provisions of Section 264 and 268 being *pari materia* with the provisions of Section 354 of the said Act, 1888, there is no reason why the directions issued by the said decision should not be applied. Therefore, in terms of the said decision, Shri Kedar V. Kale who

1. 2014 (6) Bombay Cases Reporter 860

has been appointed to do structural audit cannot base his opinion only visual inspection. He will have to consider whether tests as suggested in sub-clause (ii) of Clause (d) of paragraph 9 of the said decision are required to be carried out. In addition, he will have to ascertain what other tests are required to be carried out to enable him to give a proper opinion on the present structural status of the building. If in his opinion the tests as suggested in sub-clause (ii) are not necessary, he will have to give reasons in his report for the said conclusion.

6] After Shri Kale submits report, the Appropriate Authority of the Kalyan Dombivli Municipal Corporation will have to consider whether the impugned notices are required to be implemented. If after considering the report, the Competent Authority is of the view that the building is not in a dilapidated or ruinous condition, it will be open for the Municipal Corporation to initiate appropriate action in accordance with law. If the Competent Authority comes to the conclusion that the impugned notices will have to be acted upon, a notice to that effect will have to be served to the parties.

7] In Writ Petition No. 4958 of 2014, the learned counsel appearing for the 5th Respondent states that he will file Vakalatnama of 5th Respondent within a period of 6 weeks from today. On the prayer made by the Advocate for the Petitioners, we permit deletion of the name of the 6th Respondent in the said petition. A formal amendment to that effect shall be carried out within a period of two weeks from the date on which this order is uploaded. Accordingly, we dispose of these petitions by passing the following order:-

ORDER

- a) By consent of the Petitioners, 5th Respondent and the

Kalyan Dombivli Municipal Corporation, Shri Kedar V. Kale, Consulting Engineer having License No. 402 is hereby appointed to carry out structural audit of the subject building namely Badlapurkar Chawl described in the 1st Paragraph in the petitions. The Petitioners and 5th Respondent will deposit requisite advance amount with Shri Kale to enable him to undertake the work of structural audit;

- b) While carrying out the work of structural audit, Shri Kale will consider whether it is necessary to carry out tests as specified in clause (d) of paragraph 9 of the aforesaid decision in the case of Municipal Corporation of Greater Mumbai (Supra). If he is of the opinion that some of the said tests are not required to be carried out, he will have to record reasons for the same in his report;
- c) Needless to add that Shri Kale will be free to carry out any additional tests which are not mentioned in the aforesaid judgment and order;
- d) We direct the Petitioners and 5th Respondent to immediately supply an authenticated copy of the judgment to Shri Kale who shall act upon the same. As directed earlier, the fees and charges payable to Shri Kale will be equally shared by the Petitioners and the 5th Respondent;
- e) Shri Kale shall submit a detailed report after carrying out structural audit on the structural status of the said building to the Kalyan Dombivli Municipal Corporation within a period of 2 months from the date on which an

authenticated copy of this judgment and order is received by him;

- f) After the receipt of a report, the Competent Authority of the said Corporation will consider the said report and will decide whether the impugned notices require implementation. If the Competent Authority is of the view that impugned notices are required to be implemented, an intimation of the said decision along with copies of the report of Shri Kale shall be forwarded to the Petitioners, the 5th Respondent and to all other affected parties. In such event, no further steps shall be taken on the basis of the impugned notices for a period of 3 weeks from the date on which a copy of the decision of the Municipal Corporation as aforesaid is served to the Petitioners to enable the Petitioners to challenge the impugned notices as well as the opinion express by Shri Kale;
- g) If after considering the report of Shri Kale, the Competent Authority of the Municipal Corporation is of the view that action in terms of impugned notices is not necessary, intimation of such decision shall be also given by the Municipal Corporation to the Petitioners and 5th Respondent along with copies of the report of Shri Kale. In such event, it will be open for the 5th Respondent to file appropriate proceedings in accordance with law;
- h) Till the decision of the Competent Authority is communicated as aforesaid, the Municipal Corporation shall not act upon the impugned notices subject to

condition of the Petitioners filing undertakings in this Court stating that they will continue to occupy their respective premises at their own risk. The undertakings to further state that in the event of collapse of the building or any part thereof, the Petitioners will be solely responsible for the loss or damage caused to third parties;

- i) If such undertakings are not filed within a period of four weeks from today, the protection granted as above shall come to an end automatically;
- j) We make it clear that we had made no adjudication on the present structural status of the subject building and all question in that behalf are left open;
- k) Rule is made partly absolute on above terms. No order as to costs.
- l) All concerned including Shri Kedar V. Kale to act upon an authenticated copy of the judgment and order of this Court;

(SMT. VIBHA KANKANWADI, J.)

(A. S. OKA, J.)