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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.3038 OF 2015 IN
WRIT PETITION NO.2789 OF 2015

Rizwan Abdul Hamid Shaikh & Ors ...Applicants
vs.
Thane Municipal Corporation & Ors. ...Respondents

Mr.Anilkumar Patil for the applicants/petitioners
Mr.N.R.Bubna for the respondent No.1
Mr.A.A.Alaspurkar, AGP for respondent Nos.2 and 3.

CORAM : A.S.OKA, &
 SMT.VIBHA KANKANWADI, JJ.
DATE : JULY 13, 2017

P.C.:

1 Heard the learned counsel for the applicant and the learned counsel for the first respondent. The prayer is for modification of the order dated 11th August 2015 passed by this Court in Writ Petition No.2789 of 2015.

2 Paragraphs 3 to 5 of the said order read thus:

“3. The letter further states that the Municipal Corporation has no objection for permitting the Petitioners to carry out repairs subject to compliance with the aforesaid conditions.

4. The learned counsel appearing for the Petitioners states that the Petitioners represent all the occupants of the building in question and in fact all the occupants are ready to

bear the cost of repairs. He states that if M/s. Archinova Design INC finds that repairs cannot be carried out unless the building is vacated, the occupants of the building will vacate their respective premises and will shift to another accommodation at their own cost. He states that the Petitioners are ready and willing to file affidavit to that effect in that behalf of all the occupants. He states that the affidavit will also state that if during the period when repairs are in progress, if any loss is caused to anyone, the occupants shall undertake to take responsibility thereof.

5. In view of the statements made in letter dated 10th August, 2015 and the statements of the learned counsel appearing for the Petitioners, we dispose of the Petition by passing the following order :-

ORDER

(i) It will be open for the Petitioners and other occupants of the building described in paragraph 1 of the Petition to carry out repairs to the building at their own cost subject to condition of compliance with following conditions:-

(a) Repairs shall be carried out under the supervision and as per the advise of M/s. Archinova Design INC;

(b) The Plans and specifications of the proposed repairs shall be submitted by the Petitioners and the occupants of the said building to the Municipal Corporation at least one month before the commencement of the work of repairs;

(c) The Petitioners and all other occupants shall file an undertaking on oath in this Court within a period of one month from today stating therein that in the event M/s. Archinova Design INC require the building to be vacated, the Petitioners and all other occupants shall vacate their

respective premises at their own cost and will make arrangements elsewhere at their own cost. In such event, they shall reoccupy the repaired building only after a certificate is submitted by M/s.Archinova Design INC to the first Respondent – Municipal Corporation certifying that the building is in habitable condition after carrying out the repairs. Undertakings to further state that the work of repairs shall be carried out by the Petitioners and occupants at their own risk. In the event, there is any loss of life or loss of property due to repair work, the Petitioners and all the occupants shall be solely responsible for the liability arising out of the said loss;

(d) Undertakings as aforesaid shall be filed in this Court within a period of one month from today;

(e) Within a period of two weeks from today, the Petitioners shall file on record an affidavit giving the names and other particulars of all the occupants of the building;

(ii) As it is the case of the Petitioners that some of the premises in the building are in possession of the first Respondent – Municipal Corporation, it is obvious that the Municipal Corporation will not be required to file undertakings as aforesaid. However, on being called upon by M/s.Archinova Design INC to vacate the premises in its possession, the first Respondent shall remove itself from the premises of the said building and shall reoccupy the same only after a certificate of fitness as aforesaid is submitted by M/s. Archinova Design INC;

(iii) It is obvious that repairs shall be carried out at the cost of the Petitioners and the other occupants and they shall not be entitled to claim any reimbursement of the said expenses from the first Respondent – Municipal Corporation. A

statement to that effect shall be incorporated in the undertakings to be filed by the Petitioners and other occupants;

(iv) We make it clear that permission granted to the Petitioners and the occupants to carry out repairs to the said building will not create any equity in their favour and it will not affect their existing legal status and rights in respect of the premises in their respective possession;

(v) With the above directions, the Petition is disposed of;

(vi) For reporting compliance regarding filing of undertakings, plan and specifications of the proposed repairs, the Petition shall be listed on 14th September, 2015 under the caption of Directions. We make it clear that the work of repairs can proceed only after compliance report is produced in this Court;

(vii) We make it clear that notwithstanding the disposal of the Petition, it will be open for the Petitioners and other occupants to adopt appropriate proceedings on the basis of letter dated 19th March, 1999.

3 It is the case made out in the application that the building consists three wings B-1, B-2 and B-3. Now, it is pointed out that the petitioners are willing to pay costs of repairs of B-1 and B-2 wings. Therefore, prayer is made for modification of the order for excluding the occupants of B-3 wing from the benefit of the order dated 11th April 2015. There is nothing on record to show that the repairs of the buildings can be carried out confined only to B-1 and B-2 wings without carrying out repairs to B-3 wing. Therefore, the prayer made in this

application cannot be granted. The Civil Application is accordingly rejected.

(VIBHA KANKANWADI,J.)

(A.S.OKA,J.)