

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

**APPEAL FROM ORDER (ST.) NO. 29786 OF 2017
WITH
CIVIL APPLICATION (ST.) NO. 29967 OF 2017
IN
APPEAL FROM ORDER (ST.) NO. 29786 OF 2017**

Shri Jagannath Nagappa Shetty

...Appellant

Versus

Municipal Corporation of Greater
Mumbai & Ors.

...Respondents

WITH

**APPEAL FROM ORDER (ST.) NO. 29787 OF 2017
WITH
CIVIL APPLICATION (ST.) NO. 29969 OF 2017
IN
APPEAL FROM ORDER (ST.) NO. 29787 OF 2017**

Smt.Vanita Shridhar Bhandari

...Appellant

Versus

Municipal Corporation of Greater
Mumbai & Ors.

...Respondents

.....

Mr.P.G.Lad i/b. S.B.Amin for the Appellants.

Mr.F.M.Reis, Senior Advocate a/w. Mrs.M.R.Bhoir and Ms. Gharpure for
Respondent No.1/Municipal Corporation.

Mr.P.K.Dhakephalkar, Senior Advocate a/w. Mr.Simil Purohit, Mr.Hemang Raythatha, Mr. Jayesh Mestry i/b. RMG Law Associates for Respondent No.2.

Mr.Dushyant Purekar for Respondent Nos. 3 to 5 and 13 and 14.

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CORAM: MRS.MRIDULA BHATKAR, J.

DATED: NOVEMBER 23, 2017

P.C. :

1. These Appeals are directed against the order dated 12.10.2017 passed by the learned Ad-hoc Judge, City Civil Court and Asstt. Sessions Judge, Dindoshi, Mumbai in Draft Notice of Motion of 2017 in L.C.Suit Nos. 2220 of 2016 and 2219 of 2016 respectively.

2. Notice of Motions were taken out by the appellants /plaintiffs for restoration of electric supply and water supply, which was disconnected by the Municipal Corporation and Electric Department on 06.10.2017. This action was taken by the Municipal Corporation pursuant to the notice issued under Section 354 of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as “the said Act”). The learned Judge while considering the matter, directed the respondent/Municipal Corporation and concerned Electric Department to restore the water supply and electric supply to the shops of the appellants/plaintiffs and also liberty was given to the Municipal Corporation to disconnect the

electric supply and water supply on 24.10.2017. The learned Judge of the trial Court has also passed the following order:-

“The plaintiffs are hereby directed to submit undertaking that they will continue their business only upto 23.10.2017 at their own risk”.

Today, this order is challenged in these Appeals.

3. At the time of hearing, the learned counsel for the appellants has raised issue of correctness and authenticity of the structural report dated 18.08.2017 submitted by Technical Advisory Committee (TAC). By this report, Technical Advisory Committee has submitted that the building is in dilapidated condition and the structure under reference is not at all habitable and needs to be vacated and demolished immediately by following due process of law under the supervision of structural consultant.

4. The main contention of the learned counsel for the appellants is that the Committee did not carry out necessary tests and, therefore, another structural engineer or same competent person is to be appointed to carry out these tests. In support of his submission, he relied on the order of Division Bench of this Court **dated 09.10.2017 in Writ Petition (L) No. 1863 of 2017** in the case of **Tushar H. Shah and 14 Ors. Vs.**

State of Maharashtra and 4 others, wherein the Division Bench has directed the Municipal Corporation to perform specific tests as per the guidelines in para 9 (d) (ii) of the judgment in Writ Petition (L) No. 1135 of 2014.

5. On query made to the learned counsel for the appellants as to why undertaking as per the order was not given. Learned counsel for the appellants submitted that it remained due to oversight.

7. Learned Senior Counsel for the Municipal Corporation i.e. respondent no.1 and respondent no.2 and other counsel for respondent nos. 3 to 5 and 13 and 14 have submitted that the report given by Technical Advisory Committee (TAC) is as per the guidelines given by the Division Bench of this Court in Writ Petition (L) No. 1135 of 2014 and placed reliance on the order of Division Bench of this Court **dated 10.03.2017 in Writ Petition (L) No. 3002 of 2016** in the case of **Mr. Jayant Sunderdas Karia & Ors. Versus The Municipal Corporation of Greater Bombay & Ors. and other two Writ Petitions**. It is submitted that similar objections were raised in the said Writ Petition. However, the Division Bench has compared and accepted the report of Technical Advisory Committee and green signal has been given to the demolition and dismissed the Petition accordingly.

8. Learned Senior Counsel for the Municipal Corporation has further relied on the order of Division Bench of this Court **dated 09.10.2017 in Writ Petition (L) No. 2786 of 2017** in the case of **NKGSB Co-op Bank Ltd. Vs. The State of Maharashtra and 2 others**, wherein the Division Bench has directed the petitioner- Bank to vacate the premises, as the demolition of the building is required and granted three months time to run the business from the date of the order. He has further submitted that NKGSB Bank situates on the first floor of the said building.

9. Heard submissions. Perused three orders passed by the Division Benches of this Court and the report of the Technical Advisory Committee. As per the said report, it can be easily gathered that the building is classified in C-1 category so also the report is communicated to the concerned parties. If the facts of carrying out the tests would not have been mentioned in the report, then the case of the appellants/plaintiffs could have been covered under the order of Division Bench of this Court **dated 09.10.2017 in Writ Petition No. 1863 of 2017** in the case of **Tushar H. Shah & Ors. Vs. State of Maharashtra and 4 others**. The Division Bench has directed the Municipal Corporation to stop the demolition for want of carrying out the tests mentioned in Writ Petition (L) No. 1135 of 2014. In the

present report, in column (E), reference of structural audit report submitted by M/s. Raje Structural Consultant is on behalf TAC is found, which shows that these tests were carried out by the said consultant on behalf of TAC. If this is so, this Court will not go into further details of the TAC report on the point of authenticity of those tests on structural stability of the building. In the undertaking, the appellants did not mention about running business upto 23.10.2017, as the date specifically mentioned in the order under challenge. By the order dated 20.10.2017, the learned Single Judge of this Court directed the Municipal Corporation not to disconnect the electricity and water supply to the establishment of the plaintiffs upto 01.11.2017 and thereafter, same protection was extended till today. However, restriction put by the trial Court in respect of running of business neither stayed nor modified by this Court till today.

10. Under such circumstances, I am of the view that the water supply and electricity is not to be disconnected till 10.01.2018. The learned counsel for the parties inform that Notice of Motions alongwith Chamber Summons are scheduled on 18.12.2017 before the trial Court. The Municipal Corporation and other parties to file their respective reply and complete their proceedings on or before 11.12.2017. Copies are to be

furnished to the appellants atleast two days in advance. The appellants can run the business till 18.12.2017 at their own risk and thereafter, they are directed to stop the business. The Municipal Corporation and others will not be held responsible, as the appellants will run the business at their own risk till 18.12.2017. The trial Court to expedite the Notice of Motions on or before 10.01.2018.

11. Appeal from Orders are disposed of. Civil Applications are also accordingly disposed of.

(MRIDULA BHATKAR, J.)