

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.345 OF 2014

Gopinath Sasendra Salian and Others. .. Petitioners
Vs
Brihanmumbai Municipal Corporation
and Others. .. Respondents

—
Shri P.G. Karande for the Petitioners.
Shri Ram Apte, Senior Counsel along with Ms. Geeta Joglekar for the
Respondent Nos.1 to 3.
Shri Mayur Khandeparkar along with Shri Sharad Wakchoure i/b
Kishore Thakordas & Co for the Respondent No.4.
—

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

DATED : 24TH JULY 2017

PC.

1. By this Petition under Article 226 of the Constitution of India, the challenge is to the notices dated 26th August 2013 and 18th December 2013 issued by the Mumbai Municipal Corporation in exercise of powers under Section 354 of the Mumbai Municipal Corporation Act, 1888 (for short “the said Act”). By the impugned notice dated 26th August 2013, the Municipal Corporation directed pulling down of the building subject matter of this Petition. By the second impugned notice dated 18th December 2013 addressed by the

Mumbai Municipal Corporation to the Advocate for the Petitioners, the Petitioners were called upon to vacate the building in question.

2. By an order dated 21st December 2013, this Court directed the Prothonotary and Senior Master to appoint a Structural Engineer from the panel maintained by him. Accordingly, a Structural Engineer was appointed by the Prothonotary and Senior Master. The Structural Engineer appointed by the Prothonotary and Senior Master M/s. Padalikar Consultants submitted a report.

3. On 19th May 2014, the learned Vacation Bench passed the following order:

“Pursuant to the order passed by this court on 21st December, 2013, the Structural Engineer appointed by this court has submitted a report. Perusal of the report indicates that immediate demolition is not required as per the observations of the clinical analysis. The report indicates that with the help of repairing of the building, it would survive for couple of years. The Structural Engineer have recommended that immediate repairs be carried out to the affected part to avoid any further complications.

2. The learned counsel for the Municipal Corporation states that even in the report submitted by the structural Engineer, it is opined that further opinion will have to be obtained by carrying out various tests and thus the said report shall not be considered as conclusive. It is made clear that we have not drawn any such conclusion about the conclusiveness of the report submitted by the Structural Engineer. In view of the urgent repairs

required to the structure in question and in view of the monsoon approaching next month, petitioners are permitted to carry out urgent repairs at their own costs. It is made clear that during the process of carrying out such repairs, if any untoward accident takes place to the building or the occupants, the same shall be at the risk and cost of the petitioners and in respect thereof the Municipal Corporation will not be responsible. Till the next date, the Municipal Corporation shall not take any steps for implementation of the of notice in question. Stand over to 23rd June, 2014.”

4. Today, an affidavit is filed by the second Petitioner stating therein that as per the order dated 19th May 2014, repairs have been carried out to the shopping section of Ganesh Talkies Building under the supervision of Architect M/s. Sanhotra B. I. and Associates. Reliance is placed on the certificate dated 13th July 2017 issued by M/s. Sanhotra B. I. and Associates as well as the Structural Stability Certificate dated 13th July 2017 issued by Shri Manoj V. Sathe, a License Structural Engineer. The case made out in the affidavit tendered today is that the work has been carried out by spending a sum of Rs.37 lakhs. It is alleged that the Ganesh Talkies Building is at a distance of about 12 feet from the shopping line building occupied by the Petitioners and the same continues to be in a dilapidated condition. It is submitted that it is necessary for the Municipal Corporation to demolish the said Ganesh Talkies Building which is in a ruinous condition and which is causing damage to the building occupied by the Petitioners.

5. Learned counsel appearing for the contesting fourth Respondent submitted that there is only one building. His submission is that the structural status of the entire building continues to be the same as it existed on the date on which the impugned notices were issued. He would, therefore, submit that no interference is called for. We have also heard learned senior counsel appearing for the Mumbai Municipal Corporation.

6. We have considered the submissions. The order dated 19th May 2014 has not been challenged by any party to the Petition. Now, the Petitioners claim that on the basis of the said order, they have carried out repairs under the supervision of their Architect. The Petitioners are relying upon the Structural Stability Certificate issued by Shri Manoj V. Sathe on 13th July 2017.

7. It is not necessary for us to go into the question as to whether there are two buildings or one building. Suffice it to say that on the basis of the Structural Stability Certificate issued by Shri Manoj V. Sathe on 13th July 2017, the Mumbai Municipal Corporation will have to reconsider the issue whether in exercise of the powers under Section 354 of the said Act, the building or the buildings need to be demolished. It is not necessary for us to go into the question as to

whether the repairs carried out by the Petitioners were within the scope of the order dated 19th May 2014. The Municipal Corporation is required to reassess the structural stability of the building.

8. Hence, the Petition need not be kept pending and the same is disposed of by passing the following order:-

ORDER :

- (a) We direct that the Mumbai Municipal Corporation shall reconsider the issue whether in terms of the impugned notices, the building subject matter of this Petition need to be demolished. We direct that reconsideration will have to be made in the light of the Structural Stability Certificate 13th July 2017 issued by Shri Manoj V. Sathe and the Certificate submitted by M/s. Sanhotra B. I. and Associates;
- (b) After carrying out inspection and after carrying out assessment of the present structural status of the building in respect of which impugned notices have been issued, the Municipal Corporation will have to take appropriate decision whether it is necessary to implement the impugned notices. If necessary, the Municipal Corporation may give hearing to the

Petitioners as well as to the fourth Respondent before arriving at any conclusion;

- (c) Needless to add that the Municipal Corporation will have to consider the report submitted by the Structural Consultants appointed under the orders of this Court as well as the Structural Stability Certificate issued by Shri Manoj V. Sathe and the Certificate submitted by M/s. Sanhotra B. I. and Associates;
- (d) We make it clear that we have not made any adjudication on the question whether the repairs carried out by the Petitioners are covered by the permission granted by this Court under the order dated 19th May 2014. We also make it clear that we have not made any adjudication on the question whether the impugned notices are in relation to one building or two buildings;
- (e) In the event, the Municipal Corporation after assessing the structural status of the buildings comes to a conclusion that the impugned notices will have

to be implemented, intimation of the said decision in writing shall be issued by the appropriate authority of the Municipal Corporation to the Petitioners and the fourth Respondent as well as all occupants of the building in question. In such event, the action on the basis of the impugned notices shall not be taken for a period of 15 days from the date on which intimation in writing is served to all the occupants of the building including the Petitioners as well as the fourth Respondent to enable them to file fresh proceedings to challenge the impugned notices as well as the decision of the Municipal Corporation to implement the impugned notices. In the event, the Municipal Corporation decides that it is not necessary to implement the impugned notices, even communication of the said decision shall be issued to the Petitioners as well as the fourth Respondent and all other occupants of the building. If the fourth Respondent is aggrieved by any such decision, it will be open for the fourth Respondent to adopt appropriate proceedings in accordance with law.

- (f) We direct the Petitioners to file an undertaking to this Court stating that till fresh decision in terms of the order of this Court is taken by the Municipal Corporation, they will continue to occupy their respective premises at their own risk. The undertaking to state that in the event there is a collapse of the building or any part thereof, they will be solely responsible for the collapse or damage caused to the third party. Such an undertaking shall be filed within a period of four weeks from the date on which this order is uploaded;
- (g) With the above directions, the Writ Petition is disposed of.

(VIBHA KANKANWADI, J)

(A.S. OKA, J)