

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 5699 OF 2018**

1. Mr.Mahesh D. Jobanputra,)
Hindu Indian Inhabitant, residing at)
Building No.12/9)

2. Mr.Vishram Laxmidas Bhanushali,)
Hindu Indian Inhabitant, residing at)
Building No.12/10)

3. Mr.Mansukh Velji Gala,)
Hindu Indian Inhabitant, residing at)
Building No.12/25)

4. Mr.Parshuram Vaman Mahalaxmikar,)
Ms.Vidya Parshuram Mahalaxmikar)
Hindu Indian Inhabitant, residing at)
Building No.12/26)

5. Mr.Devji Khemji Dedhia,)
Mrs.Jayshree Shantilal Dedhia,)
Hindu Indian Inhabitant, residing at)
Building No.12/39,)
Mathuradas Colony, Kole Kalyan,)
Kalina, Santacruz (East),)
Mumbai 400 098)

**..... Petitioners/
 Org.Plaintiffs**

VERSUS

1.Municipal Corporation of Greater)
Mumbai,)
through Assistant Municipal Commissioner)
having its office at)
Designated Officer – II, “H” East)
Ward Office, Prabhat Colony,)
Santacruz (East), Mumbai-400 098)

2. M/s.Hindva Builders,)
Jaavi Infra Pvt. Ltd.,)
a Private Limited registered under)
Indian Companies Act, 1956,)
having office at Building No.4,)
Ground Floor, Mathuradas Colony,)
St.Anthony Street, Kalina,)
Mumbai – 400 098)

..... Respondents/
Org.Respondent nos.1&2

3. Mr.Francis Borgeo,)
Room No.27, Bldg. No.12,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98.)

4. Mr.K.J.Paul,)
Room No.29, Bldg. No.12,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98.)

5. Mrs.Aleyamma Paul,)
Room No.28, Bldg. No.12,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98.)

6. Mrs.Georgina Pinto,)
Room No.20, Bldg. No.12,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98.)

7. Mrs.Monica Noronha,)
Room No.30, Bldg. No.12,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98.)

8. Mr.Peter J. Fernandes,)
Room No.23, Bldg. No.12,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98.)

9. Mr.Kuldeep Singh Notre,)
 Room No.37, Bldg. No.12,)
 Mathuradas Colony, Kalina,)
 Santacruz (East), Mum – 98.)

10. Mrs.Mohinderjeet Kaur,)
 Room No.38, Bldg. No.12,)
 Mathuradas Colony, Kalina,)
 Santacruz (East), Mum – 98.)

11. Mr.Tibureio Fernandes,)
 Room No.1, Bldg. No.12,)
 Mathuradas Colony, Kalina,)
 Santacruz (East), Mum – 98.)

12. Jane D'Souza,)
 Room No.35, Bldg. No.12,)
 Mathuradas Colony, Kalina,)
 Santacruz (East), Mum – 98.)

..... Respondent nos.
 3 to 12/Org.Applicants

**ALONGWITH
 WRIT PETITION NO. 6582 OF 2018**

1. Mrs.Nirmala Premji Shah,)
 Mr.Hemant P. Shah,)
 Hindu Indian Inhabitant residing at))
 Building No.10/4)

2. Mr.Rayshi Palan Gala,)
 Mr.Ramesh Rayshi Gala,)
 Hindu Indian Inhabitant residing at))
 Building No.10/7)

3. Mr.Paresh Vershi Gada,)
 Indian Inhabitant residing at)
 Building No.10/6)
 Mathuradas Colony, Kole Kalyan,)
 Kalina, Santacruz (East),)
 Mumbai 400 098)

..... Petitioner/
 Org.Plaintiff

VERSUS

1.Municipal Corporation of Greater)
Mumbai,)
through Assistant Municipal Commissioner)
having its office at)
Designated Officer – II, “H” East)
Ward Office, Prabhat Colony,)
Santacruz (East), Mumbai-400 098)

2. M/s.Hindva Builders,)
Jaavi Infra Pvt. Ltd.,)
a Private Limited registered under)
Indian Companies Act, 1956,)
having office at Building No.4,)
Ground Floor, Mathuradas Colony,))
St.Anthony Street, Kalina,)
Mumbai – 400 098)

**..... Respondents/
 Org.Respondent nos.1&2**

3. Mrs.Usha Amin,)
Room No.3, Bldg. No.10,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)

4. Mr.Damas Gonsalves,)
Room No.12, Bldg. No.10,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)

5. Mr.Theodore Mendes,)
Room No.11, Bldg. No.10,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)

6. Mrs.Jyoti Subhash Patel,)
Room No.19, Bldg. No.10,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)

7. Mr.Vinay Kabre,)
 Room No.22, Bldg. No.10,)
 Mathuradas Colony, Kalina,)
 Santacruz (East), Mum – 98)

8. Mrs.Rehana Shaikh,)
 Room No.21, Bldg. No.10,)
 Mathuradas Colony, Kalina,)
 Santacruz (East), Mum – 98)

9. Mr.Sandeep B. Pardeshi,)
 Room No.8, Bldg. No.10,)
 Mathuradas Colony, Kalina,)
 Santacruz (East), Mum – 98)

..... Respondent nos.
 3 to 9/Org.Applicants

**ALONGWITH
 WRIT PETITION NO. 6583 OF 2018**

1. Dhirajlal Shah,)
 Hindu Indian Inhabitant residing at)
 Building No.5/11,)

2. Mr.Dhanji Tokarshi Shah,)
 Hindu Indian Inhabitant residing at)
 Building No.A1/5,)
 Mathuradas Colony, Kole Kalyan,)
 Kalina, Santacruz (East),)
 Mumbai 400 098)

..... Petitioners/
 Org.Plaintiffs

VERSUS

1.Municipal Corporation of Greater)
 Mumbai,)
 through Assistant Municipal Commissioner)
 having its office at)
 Designated Officer – II, “H” East)
 Ward Office, Prabhat Colony,)
 Santacruz (East), Mumbai-400 098)

2. M/s.Hindva Builders,)
Jaavi Infra Pvt. Ltd.,)
a Private Limited registered under)
Indian Companies Act, 1956,)
having office at Building No.4,)
Ground Floor, Mathuradas Colony,)
St.Anthony Street, Kalina,)
Mumbai – 400 098)

..... Respondents/
Org.Respondent nos.1&2

3. Mrs.Suneet Challapalli,)
Room No.18, Bldg. No.5,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)

4. Mr.Mathew Inacio Abreo,)
Room No.28, Bldg. No.5,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)

5. Mrs.Jyoti Subash Patel,)
Room No.17, Bldg. No.5,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)

6. Mr.Manohar Shetty,)
Room No.19, Bldg. No.5,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)

7. Mrs.Shobha P. Temkar,)
Room No.14, Bldg. No.5,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)

8. Mr.Paresh Shah,)
Room No.21, Bldg. No.5,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)

9. Mr.Mohammed Saad Shaikh,)
Room No.31, Bldg. No.5,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)
10. Mr.Sandip Patel,)
Room No.13, Bldg. No.5,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)
11. Mr.Mathew Inacio Abreo,)
Room No.15, Bldg. No.5,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)
12. Mr.Sandip K. Patel,)
Room No.9, Bldg. No.5,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)
13. Mr.Sandip Patel,)
Room No.13, Bldg. No.5,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)
14. Ms.Reshma Amin,)
Room No.1, Bldg. No.4,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)
15. Ms.Usha Amin,)
Room No.2, Bldg. No.4,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)
16. Mr.Gordon A. Roach,)
Room No.2, Bldg. No.4,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)

17. Mr.Prateep Kumar Basak,)
Room No.5, Bldg. No.4,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)
18. Mr.M.H.Marchant,)
Room No.13, Bldg. No.9,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)
19. Mrs.Shailaja Pillai,)
Room No.4, Bldg. No.4,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)
20. Mrs.Vandana Kadam,)
Room No.8, Bldg. No.4,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)
21. Mr.Mark Hichey,)
Room No.3, Bldg. No.9,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)
22. Mr.Crucifix Medes,)
Room No.6, Bldg. No.14,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)
23. Mr.R.H.Mehta,)
Room No.2, Bldg. No.6,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)
24. Mr.Ravi Kumar Sahani,)
Room No.1A, Chawl No.T,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)

25. Mr.Benanrd Felix D'Mello,)
Room No.5, Bldg. No.9,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)
26. Mr.John Mendes,)
Room No.2, Chawl No.T,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)
27. Mr.Manohar Shetty,)
Room No.5, Chawl No.3,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)
28. Mrs.Poonam Vohra,)
Room No.2, Chawl No.14A,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)
29. Mrs.Rekha Mistry,)
Room No.4, Chawl No.14B,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)
30. Mrs.Kalyani Bangera,)
Room No.1, Chawl No.14,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)
31. Mr.Pundalik G. Chari,)
Room No.1, Bldg. No.14B,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)
32. Mr.K.K.Dhakra,)
Room No.1A, Chawl No.T,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)

..... Respondent nos.
3 to 32/Org.Applicants

1. Municipal Corporation of Greater Mumbai,)
through Assistant Municipal Commissioner))
having its office at)
Designated Officer – II, “H” East)
Ward Office, Prabhat Colony,)

Santacruz (East), Mumbai-400 098)

**2. M/s.Hindva Builders,)
Jaavi Infra Pvt. Ltd.,)
a Private Limited registered under)
Indian Companies Act, 1956,)
having office at Building No.4,)
Ground Floor, Mathuradas Colony,)
St.Anthony Street, Kalina,)
Mumbai – 400 098)**

**..... Respondents/
Org.Respondent nos.1&2**

**3. Mr.Jagdish Amin,)
Room No.12, Bldg. No.11,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)**

**4. Mr.Francis Geigas,)
Room No.15, Bldg. No.11,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)**

**5. Mrs. Kannan Narain,)
Room No.14, Bldg. No.11,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)**

**6. Mr.C.P.Swaminathan,)
Room No.16, Bldg. No.11,)
Mathuradas Colony, Kalina,)
Santacruz (East), Mum – 98)**

**.. Respondent nos.
3 to 6/Org.Applicants**

Mr.Prashant P. Chavan, I/b. Mr.Ravindra R. Chile for the Petitioners.

Mr.V.V. Walawalkar, Senior Advocate, a/w. Mr.D.S.Shingade for the
BMC – Respondent no.1.

Mr.Kirit Munshi, a/w. Mr.Amit Bhave, i/b. Milan Bhise & CO. for the

Respondent no.2.

Mr.K.D.Shukla for the Intervenor.

Mr.Swapnil Bangur a/w. Ms.Geentanjali Shelar for the Original Applicants in Chamber Summons and the Proposed Defendants.

CORAM : R.D. DHANUKA, J.

DATE : 22nd OCTOBER, 2018

ORAL JUDGMENT

By all these writ petitions filed under Article 227 of the Constitution of India, the petitioners (original plaintiffs) have impugned the order dated 9th March,2018 passed by the learned trial judge allowing the chamber summons filed by the applicants under Order 1 Rule 10 of the Code of Civil Procedure, 1908 *inter alia* praying for their impleadment in a suit filed by the petitioner (original plaintiff) challenging the validity of the notice issued by the Municipal Corporation of Greater Bombay under section 354 of the Mumbai Municipal Corporation Act, 1888.

2. Mr.Chavan, learned counsel appearing for the plaintiffs invited my attention to the documents annexed to the petitions, averments made in the prayers in the plaint and the findings recorded by the learned trial judge in the impugned order. It is submitted that the petitioners had challenged the validity of the notices issued by the Municipal Corporation under section 354 of the Act and thus the applicants in the chamber summons who are claiming to be some of the occupants in the buildings in respect of which the said notice is issued by the Corporation are neither necessary nor property parties for the purpose of adjudication of the dispute between the parties.

3. Learned counsel placed reliance on the judgment of Supreme Court in case of ***Mohammed Hussain Gulam Ali Shariff vs. Municipal Corporation of Greater Bombay & Ors.*** 2016 DGLaw (SC) 884 and would submit that though in the said judgment, the Hon'ble Supreme Court had dealt with the notices issued under section 351 of the Municipal Corporation Act, the said principles will apply to the challenge to notice under section 354 of the Act. He submits that the said judgment is binding on this court and thus the impugned order passed by the learned trial judge allowing the chamber summons of the applicants being contrary to the principles of law laid down by the Supreme Court in case of ***Mohammed Hussain Gulam Ali Shariff*** (supra) deserves to be set aside.

4. Mr.Bangur, learned counsel for the proposed defendants (original applicants) on the other hand supports the findings rendered by the learned trial judge and submits that the applicants are the necessary parties. Though they have been served with the similar notices issued by the Municipal Corporation, they are not opposing those notices but are supporting the cause mentioned in the said notice issued under section 354 of the Act. It is submitted by the learned counsel that the condition of the building is absolutely deteriorated and in ruinous condition and thus the learned trial judge was justified in passing order of their impleadment as party defendants to the suit. He submits that if the plaintiffs obtains any order behind their back and if the notice issued by the Municipal Corporation is set aside by the City Civil Court, interest of the applicants would be seriously affected.

5. Mr.Walawalkar, learned senior counsel for the Municipal Corporation submits that the condition of the building is absolutely dilapidated and may collapse any time and thus this court shall consider that aspect while considering the writ petition filed by the petitioners.

6. Mr.Munshi, learned counsel for the respondent no.2 invited my attention to section 351 of the Act and would submit that the Municipal Corporation under the said provision is empowered to issue notice to the owner or to the occupier who according to the Municipal Corporation has commenced work contrary to section 347 of the Act. He also invited my attention to the section 354 of the Act and would submit that under the said provision the authority issues a notice to the owner as well as all the occupiers of the structure which is in ruinous condition is likely to fall. He submits that such notice which was issued by the Municipal Corporation which is subject matter of the suit filed by the plaintiffs was issued not only to the petitioners but was issued to all the other occupants including the applicants. He submits that his client has made a proposal for redevelopment of the entire property. It is submitted by the learned counsel that the the provisions of section 351 is in contra distinction with the section 354. If any order is passed by the City Civil Court in the suit filed by the plaintiff, all the occupants would be affected by the said order.

7. Learned counsel distinguished the judgment of the Hon'ble

Supreme Court in case of ***Mohammed Hussain Gulam Ali Shariff*** (supra) and would submit that the said judgment had dealt with the provisions of section 351 of the Mumbai Municipal Corporation Act and not section 354. He invited my attention to the notice issued by the Municipal Corporation on 17th July, 2017 and submits that the said notice was issued to the owners as well as the occupiers of the four buildings which are subject matter of these four writ petitions. It is stated in the said notice that the building was in ruinous condition and is likely to fall and is dangerous to the persons occupying, resorting to or passing by the same. It is not in dispute that the said notice was subject matter of the suit filed by the plaintiff before the City Civil Court.

8. Mr.Munshi, learned counsel for the developer tenders a chart for consideration of this court and would submit that insofar as building no.5 is concerned, there are 36 tenants, out of which 32 tenants have already vacated. The two tenants have however filed a suit before the learned trial judge impugning the notices under section 354 of the Act. He submits that insofar as building no.10 is concerned, there are 22 tenants out of which 14 tenants have already vacated their tenaments. Only three tenants have challenged the notice issued by the Municipal Corporation under section 354. Seven occupants tenants filed chamber summons which came to be allowed by the learned trial judge.

9. Learned counsel submits that insofar as building no.11 is concerned, there are 21 tenants, out of which 15 tenants have already vacated. 6 tenants have filed a suit impugning the notice issued under

section 354 of the Municipal Corporation Act. 4 tenants have filed application for impleadment before the learned trial judge which came to be allowed. He submits that insofar as building no.12 is concerned, there are 41 tenants, out of which 31 tenants have already vacated. 5 tenants have filed a suit impugning the notice issued under section 354. 10 tenants have filed intervention application.

10. A perusal of the said notice dated 17th July, 2017 issued under section 354 clearly indicates that the said notice is not issued in respect of any particular tenement in possession of any of the occupant but has been issued in respect of the entire building to the owners as well as all the occupiers. Insofar as notice contemplated under section 351 of the Mumbai Municipal Corporation Act is concerned, on a plain reading of the said section, it is clear that the said notice can be issued to the owners as well as the occupiers if it is found by the Municipal Corporation that the work has been commenced contrary to section 347 of the Mumbai Municipal Corporation Act. Under section 347, a person is allowed to commence construction of any building or execute any such work as is described in section 342. Section 342 of the Act provides for a notice to be given to the commissioner with intention to make additions or change of user of the building.

11. It is thus clear beyond reasonable doubt that insofar as scope of the section 351 of the Act is concerned, the same can be pressed in service when the Corporation finds any unauthorized work being carried out by such occupant or the owner thereof. A perusal of section 354 however indicates that the said provision can be pressed in service

when the structure occupied by the occupier or the owner of the building is in a dilapidated or ruinous condition. In this case, the notice was issued in respect of the entire building and not any particular tenement. Some of the other occupants who were not impleaded as a party defendants to the suit, therefore rightly applied for their impleadment before the learned trial judge on the ground that if any order is passed by the City Civil Court in the said suit impugning the notice issued by the Municipal Corporation under section 354 of the Act, they would be seriously affected. In my view, Mr. Munshi, learned counsel for the developer is right in his submission that the provisions under sections 351 and 354 are totally different and are invoked in two different situations. In my view, both these provisions operate in different field. The parties who are entitled to be served with such notice also in a given case may be different. The purposes of giving notice under section 351 and section 354 are also totally different.

12. In my view, the other occupants who are also issued similar notices under section 354 of the Mumbai Municipal Corporation Act may be seriously affected if any order is passed by the City Civil Court in respect of such notice under section 354 which was admittedly issued in respect of the entire building and not a particular structure occupied by the plaintiffs alone. Any order that may be passed by the City Civil Court thus would obviously affect all the occupants and not the plaintiffs alone. In my view the presence of all the occupants thus would be absolutely necessary for the purpose for determining the controversy involved in the said suit.

13. Insofar as the judgment of the Hon'ble Supreme Court in case of ***Mohammed Hussain Gulam Ali Shariff*** (supra) is concerned, a perusal of the said judgment clearly indicates that the Hon'ble Supreme Court had dealt with the case of impleadment of the persons claiming interest in the property which was subject matter of the suit impugning the notice issued under section 351 of the Municipal Corporation Act. In that context, the Hon'ble Supreme Court held that the presence of third party could not be required for the purpose of considering the relief to be granted in the said suit filed challenging the validity of the notice issued under section 351. The Municipal Corporation who had issued the notice was already a party defendant to the said suit. In my view the principles of law laid down by the Supreme Court while considering the provisions of Order 1 Rule 10 in a suit impugning the notice under section 351 of the Bombay Municipal Corporation Act cannot be extended to a notice issued under section 354 of the Bombay Municipal Corporation Act. The said judgment is thus clearly distinguishable in the facts of this case and would not assist the case of the plaintiffs.

14. On perusal of the order passed by the learned trial judge, I do not find any infirmity in the impugned order. I am thus not inclined to interfere with the impugned order passed by the learned trial judge. All these writ petitions are devoid of merits and are accordingly dismissed. No order as to costs.

15. Mr.Chavan, learned counsel for the plaintiffs at this stage states

that the amendment to the plaint would be carried out within two days from today and amended copy of the plaint would be served upon the learned advocate who was representing those applicants in the chamber summons simultaneously. Statement is accepted.

16. Hearing of the suit is expedited.

17. Both the parties are directed to convey this order to the learned trial judge to permit the plaintiffs to carry out amendment.

18. Leave to amend is granted to correct the numbers of the chamber summons and the suit number. Amendment to be carried out forthwith. Re-verification is dispensed with.

[R.D. DHANUKA, J.]

Kanchan
Vinod
Mayekar

Digitally signed
by Kanchan
Vinod Mayekar
Date: 2018.10.23
19:13:49 +0530