

ssp

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8524 OF 2015

Smt. Amina Khatun Dadamiya Siddibilal
Through Poa Holder And Ors.Petitioners
V/S
Pune Municipal Corporation
And Ors.Respondents

Mr.Atul G. Damle, Senior Advocate i/b Mr.Hassnain
Kaazi Sayyed for the petitioners
Mr.Rajdeep Khadapkar for the respondent Nos.1 to 3.

WITH
WRIT PETITION NO.4405 OF 2018

Inayat Abdul Masjid KhanPetitioner
V/S
Pune Municipal CorporationRespondent

WITH
WRIT PETITION NO.4406 OF 2018

Sayyed Ali Ajdar Ali Irani ...Petitioner
vs.
Pune Municipal CorporationRespondent

WITH
WRIT PETITION NO.4407 OF 2018

Lalita Santavan Suryavanshi ...Petitioner
vs.
Pune Municipal CorporationRespondent

WITH
WRIT PETITION NO.4408 OF 2018

Sharfuudin Imam Sahib Shaikh ...Petitioner
vs.
Pune Municipal CorporationRespondent

**WITH
WRIT PETITION NO.4409 OF 2018**

Shaikh Bakshu Noorsahab since deceased thru.L.Rs.	...Petitioners
vs.	
Pune Municipal Corporation	Respondent

**WITH
WRIT PETITION NO.4410 OF 2018**

Zainabee Jafar Khan since deceased thru.L.Rs	...Petitioners
vs.	
Pune Municipal Corporation	Respondent

**WITH
WRIT PETITION NO.4411 OF 2018**

Yasmin Rafiq Shaikh	...Petitioner
vs.	
Pune Municipal Corporation	Respondent

**WITH
WRIT PETITION NO.4412 OF 2018**

Baburao Raghoba Mahadik since decd. thru.L.Rs	...Petitioners
vs.	
Pune Municipal Corporation	Respondent

**WITH
WRIT PETITION NO.4413 OF 2018**

Zarina Asgar Ali	...Petitioner
vs.	
Pune Municipal Corporation	Respondents

**WITH
WRIT PETITION NO.4415 OF 2018**

Mohammad Issac Mohammad Ibrahim since decd.thru.L.Rs.	...Petitioners
vs.	
Pune Municipal Corporation	Respondent

**WITH
WRIT PETITION NO.4416 OF 2018**

Mehboob Abdul Vahidbhai since
deceased thru.L.Rs. ...Petitioners
vs.
Pune Municipal CorporationRespondent

**WITH
WRIT PETITION NO.4417 OF 2018**

Babulal Ashmatali Khan since
decd.through L.Rs ...Petitioners
vs.
Pune Municipal CorporationRespondent

**WITH
WRIT PETITION NO.4419 OF 2018**

Asfaq N. Mulla ...Petitioner
vs.
Pune Municipal CorporationRespondent

**WITH
WRIT PETITION NO.4420 OF 2018**

Shain Gafoor Shikalkar ...Petitioner
vs.
Pune Municipal CorporationRespondent

**WITH
WRIT PETITION NO.4422 OF 2018**

Munawar Khan Hussain Khan
since decd.through L.Rs. ...Petitioners
vs.
Pune Municipal CorporationRespondent

**WITH
WRIT PETITION NO.4423 OF 2018**

Shaikh Bashir Abdulbhai
since decd.through Lrs. ...Petitioners
vs.
Pune Municipal CorporationRespondents

**WITH
WRIT PETITION NO.4425 OF 2018**

Shaikh Abdul Mulani since decd. through L.Rs.	...Petitioners
vs.	
Pune Municipal Corporation	Respondent

**WITH
WRIT PETITION NO.4427 OF 2018**

Rasul Khan Rahim Khan	...Petitioner
vs.	
Pune Municipal Corporation	Respondent

**WITH
WRIT PETITION NO.4431 OF 2018**

Abdul Reham Sayyad Hussain	...Petitioner
vs.	
Pune Municipal Corporation	Respondent

**WITH
WRIT PETITION NO.4432 OF 2018**

Shaikh Asgar Amanat Ali	...Petitioner
vs.	
Pune Municipal Corporation	Respondent

**WITH
WRIT PETITION NO.4434 OF 2018**

Shaikh Shamshuddin Sk.Hussain	...Petitioner
vs.	
Pune Municipal Corporation	Respondent

**WITH
WRIT PETITION NO.4436 OF 2018**

Masjidkhan Hajiabdul Rehman	...Petitioner
vs.	
Pune Municipal Corporation	Respondent

**WITH
WRIT PETITION NO.4443 OF 2018**

Fatimabee Papamiya Kazi ...Petitioner
 vs.
 Pune Municipal CorporationRespondent

**WITH
 WRIT PETITION NO.4935 OF 2018**

Khalid Ahmed Shaikh ...Petitioner
 vs.
 Pune Municipal CorporationRespondent

**WRIT
 WRIT PETITION NO.4936 OF 2018**

Habibullah Abdulla Shaikh
 since decd. through LRs. ...Petitioners
 vs.
 Pune Municipal CorporationRespondent

**WITH
 WRIT PETITION NO.4938 OF 2018**

Fayyaz Mehboob Shaikh ...Petitioner
 vs.
 Pune Municipal CorporationRespondents

**WITH
 WRIT PETITION NO.4940 OF 2018**

Fayyaz Mehboob Shaikh ...Petitioner
 vs.
 Pune Municipal CorporationRespondents

**WITH
 WRIT PETITION NO.4960 OF 2018**

Khurshid Begum Ahmed Shaikh ...Petitioner
 vs.
 Pune Municipal CorporationRespondent

Mr Uday Warunjikar for Petitioners in all petitions
 except WP/8524/2015
 Mr.Rajdeep S.Khadapkar for the respondent No.1 in
 all petitions

Mr.Atul G. Damle, Senior Advocate i/b Hassnain Kaazi Sayyed for added respondents (intervenors) in all the petitions except WP/8524/2015.

CORAM : A.S.OKA, &
RIYAZ.I.CHAGLA, JJ.
DATE : JUNE 11, 2018

P.C.:

1 As far as Writ petition No.8524 of 2015 is concerned, this petition under Article 226 of the Constitution of India is filed by the petitioners who are claiming to be the owners of the property more particularly described in paragraph 3A of the said petition. On the said property, there are chawls/ building Nos.1,2 and 3 which are occupied by the 89 tenants. The other Writ Petitions have been filed by the tenants in the buildings.

2 On 29th November 2009, the Pune Municipal Corporation (for short 'the said Corporation') issued a notice under sub-section 1 of section 264 of the Maharashtra Municipal Corporations Act,1949 (for short 'the said Act'). The notice records that the buildings are in a dilapidated condition, and therefore, the demolition of the buildings will be necessary. On 27th May 2013, the Additional City Engineer passed a speaking order. It appears that the Municipal Officer passed the order which was already incorporated in the letter dated 6th May 2013 directing the petitioners in Writ Petition No.8524 of 2015 to stop demolition of the buildings. Being aggrieved by the said direction of stopping

the demolition, the petitioners in the said writ petition filed Writ Petition No.5427 of 2013. By the order dated 8th October 2013 passed in the said Writ Petition, a Division Bench of this Court directed the Registrar General of this Court to appoint a Structural Engineer from the panel of Structural Engineers prepared by the High Court and also appoint a Retrofitting Specialist. Accordingly, the Registrar General called for the report of an Architect and Engineer who submitted the report dated 26th February 2014. The report records that the structures of the said buildings are not safe and are unfit for habitation. The report rules out the possibility of carrying out repairs.

3 When the said earlier petition came up for final hearing on 7th February 2014, the submission of the petitioners therein was that the action under clause (c) of sub-section 1 of section 268 of the said Act of passing an order of demolition be taken in the light of the earlier notice dated 29th November 2009. The Division Bench by the Judgment and Order dated 7th February 2014 rejected the challenge to the direction contained in the letter dated 6th May 2013 and granted permission to the petitioners to make a representation to the said Corporation. This Court directed the appropriate Officer of the said Corporation to pass an appropriate order after taking into consideration the report of Shri Nandkishor Udas, Architect appointed by the Registrar General and come to a

conclusion whether action under section 264 (1) of the said Act needs to be initiated.

4 It appears from the averments made in Writ Petition No.8524 of 2015 that a report was submitted by the Deputy Engineer of the said Municipal Corporation on 18th October 2014 recommending an action under clauses (b) and(c) of sub-section (1) of section 268 of the said Act and recommended action of cancellation of the direction issued on 6th May 2013 to stop the work of demolition. It records that a separate order has been made on the proposal for carrying out repairs. The first prayer in Writ Petition No.8524 of 2015 seeks a writ of Mandamus directing the Commissioner of the said Corporation to exercise powers under sub-section (1) of section 264, clauses (b) and(c) of sub-section (1) of section 268 and sub-section 7 of section 268 of the said Act in terms of the report submitted by Shri Nandkishor Udas, Architect and Engineer on 10th February 2015. In fact, this is the only prayer which is pressed into service. In all other petitions, the challenge is to the impugned notices which are issued in March 2018 by the said Municipal Corporation, in purported exercise of the powers under clause(c) of sub-section (1) of section 268 recording that the Committee constituted as per the Development Control Regulation (for short "DC Regulation Nos.24.6") has declared the buildings as dangerous. By the said notices, the occupants/tenants were called upon to vacate their respective

premises failing which the power under sub-section (7) of section 268 of forcible eviction with the help of police will have to be exercised.

5 A common affidavit in reply was permitted to be filed to the petitions filed by the tenants. The learned counsel for the said Municipal Corporation submitted a reply filed by Shri Prakash Madhukar Waghmare, City Engineer of the said Corporation which is signed by the said Officer but not affirmed. The reply shows that an Architect appointed by the owners (petitioners in Writ Petition No.8542 of 2015) submitted a proposal for redevelopment of the said buildings as provided in Regulation 24.6 of the D.C.Regulations on the footing that the buildings are in dangerous and dilapidated condition. As provided in clause (d) of Regulation 24.6 of the DC Regulations, the Committee comprising of the Municipal Commissioner and other Officers as well as Head of the Department of the Structural Engineering of the Government Engineering College was required to be set up to decide whether the buildings were in dangerous or dilapidated or unsafe condition. The said Committee in its meeting held on 28th February 2018 held that the buildings were in dangerous condition and approved the report dated 13th March 2018. A copy of the minutes is annexed as Exhibit-5 to the reply and copy of review report on structural stability submitted by the College of Engineering is annexed as Exhibit-6 to the reply. On plain reading of the

notice issued on 6th May 2018 to the occupants it appears that an action under clause (c) of sub-section (1) section 268 was proposed. On the basis of the decision taken by the Committee on 28th February 2018, no order was passed by the Municipal Commissioner/Designated Officer under sub-section 1 of section 264 of the said Act.

6 Sub-section 1 of section 264 confers a power on the Designated Officer to require the owner or occupier of a structure to demolish the structure which is in ruinous condition or which is likely to fall. Various powers are conferred on the Designated Officer under section 264 in case of such a building. Under sub-section 1 of section 268, the Commissioner is empowered by a written notice to order any building or any part thereof to be vacated forthwith or within the time specified in the said notice. Section 268 of the said Act reads thus:

"268. Power of Commissioner to vacate any building in certain circumstances.

(1) Notwithstanding the provisions of any other law to the contrary the Commissioner may, by written notice, order any building or any portion thereof to be vacated forthwith or within the time specified in such notice-

(a) if such building or portion thereof has been unlawfully occupied in contravention of section 263,

(b) if a notice has been issued in respect of

such building or part thereof requiring the alteration or reconstruction of any existing staircase, lobby, passage or landing and the works specified in such notice have not been commenced or completed;

(c)if the building or part thereof is in a ruinous or dangerous condition within the meaning of section 264.

(2) In every such notice the Commissioner shall clearly specify the reasons for requiring such building or portion thereof to be vacated.

(3) The affixing of such written notice on any part of such premises shall be deemed a sufficient intimation to the occupiers of such building or portion thereof.

(4) On the issue of a notice under subsection (1), every person in occupation of the building or portion thereof of which the notice relates shall vacate such building or portion as directed in the notice and no person shall so long as the notice is not withdrawn enter the building or portion thereof except for the purpose of carrying out any work which he may lawfully carry out.

(5) The Commissioner may direct that any person who acts in contravention of subsection (4) shall be removed from such building or part thereof by any police officer.

(6) The Commissioner shall, on the application of any person who has vacated any premises in pursuance of a notice under sub-section (1), reinstate such person in the premises on the withdrawal of such notice, unless it is in his opinion impracticable to restore substantially the same terms of occupation by reason of any structural alteration or demolition.

(7) The Commissioner may direct the removal from the said premises by any police officer of any person who obstructs him in any action taken under sub-section (6) and may also use such force as it reasonably necessary to effect entry in the said premises."

7 After having heard the learned counsel for the parties, we find that it is not the case of the said Corporation or the petitioners in Writ Petition No.8524 of 2015 that the Designated Officer has exercised the power under section 264 or that the Municipal Commissioner or any Municipal Officer has exercised the power under sub-section 1 of section 268. The notices which are impugned are based only on the conclusions recorded in the meeting held on 28th February 2018 of the Committee constituted in accordance with clause (d) of Regulation 24.6 of the D.C.Regulations.

8 Regulation 24.6 deals with the redevelopment of old and dangerous buildings. Clause(d) of Regulation

24.6 provides for appointing a Committee of experts which comprises of the Commissioner, the Superintending Engineer of the Public Works Department (PWD) of the State of Maharashtra, Joint Director, Town Planning, Chief Fire Officer, and the Head of structural Engineering Department of the Government Engineering College. It is for the said Committee to decide whether the building in respect of which redevelopment is sought under Regulation 24.6 of the D.S.Regulations is dangerous or dilapidated or unsafe.

9 We have perused the minutes of the meeting dated 28th February 2015 (Exhibit-5 to the reply of Shri Waghmare). The minutes firstly refer to the conclusions in the reports of the Architects including the Architect appointed by the Owners. Thereafter, the Committee refers to the report dated 13th March 2018 (Exhibit-6 to the reply) and records that the building is in dangerous condition. We find from the report dated 13th March 2018 that the same is based only on visual inspection of the structures by the Committee Members and opinion of other experts. Moreover, the minutes of the meeting dated 28th February 2018 do not show that there was any independent application of mind by the members of the Committee constituted under clause (d) of Regulation 24.6. In our view, the Committee of experts could not have recorded a conclusion regarding the structural status of the building only on the basis of the visual inspection made by them.

Moreover, the report dated 13th March 2018 was signed only by the Professor of Applied Mechanics, COEP and Executive Engineer of Public Works Department. The members of the Committee constituted under clause(d) of 24.6 consists of the Head of the Department of Structural Engineering in the College of Engineering, the Joint Director of Town Planning, the Superintending Engineer of the PWD, Chief Fire Brigade Officer of the said Corporation and the Municipal Commissioner. The members of the said Committee were expected to independently apply their mind before declaring any building as dangerous. Taking the decision recorded in minutes dated 28th February 2018 as correct, we find that there is no application of mind whatsoever by the members of the Committee and perhaps the members of the Committee were impressed by the representation made by Shri Nisar Pathan, Architect of the Owner and the report dated 13th March 2018. In any event, only on the basis of the exercise done by the Committee constituted under clause(d) of the Regulation 24.6, an action either under section 264 or 268 of the said Act cannot be initiated as the power under the said sections it is an independent power. Therefore, the notice issued on 27th March 2018 in purported exercise of power under sub-section 1 of section 268 only on the basis of the report of the Committee is completely illegal.

10 Only the prayer clause (a) of Writ Petition No.8524 of 2015 is pressed into service. Hence, we

need not keep the petition pending. It is ultimately for the Officer empowered under sub-section 1 of section 264 to decide whether an action of demolition deserves to be taken. As stated earlier, it is not clear whether any such decision was taken by the concerned Officers.

11 Accordingly, we dispose of the petitions by following order:

Writ Petition No.8524 OF 2015

(I) We direct the appropriate Authorities of the Pune Municipal Corporation to take a final decision on the question whether any action under section 264 or under section 268 of the Mumbai Municipal Corporations Act, 1949 deserves to be taken on the basis of the report submitted by Shri Nandkishor Udas, Architect & Engineer as well as on the basis of the other material on record. The Authorities are bound to apply their mind to the structural status of the said buildings. Appropriate decision shall be taken by the concerned Authorities of the Pune Municipal Corporation in accordance with law as expeditiously as possible and in any event within a period of two month from the date on which this order is uploaded;

(II) If a decision is taken of demolition or pulling down the buildings, notice to that effect in writing shall be served to all the

occupants/tenants of the premises in the said buildings. But actual action of pulling down or demolition of the building or an action under sub-section 7 of section 268 of the said Act shall not be taken for a period of 15 days from the date of service of the notice to the occupants/tenants in the building;

(III) We make it clear that we have made no adjudication on the structural status of the buildings in question and the decision is left to the Officers competent to take action under the provisions of the said Act.

WP Nos.4405/2018, 4406/2018, 4407/2018, 4408/2018, 4409/2018, 4410/2018, 4411/2018, 4412/2018, 4413/2018, 4415/2018, 4416/2018, 4417/2018, 4419/2018, 4420/2018, 4422/2018, 4423/2018, 4425/2018, 4427/2018, 4431/2018, 4432/2018, 4434/2018, 4436/2018, 4443/2018, 4935/2018, 4936/2018, 4938/2018, 4940/2018, 4960/2018

(I) Impugned notices issued in purported exercise of power under clause (c) sub-section (1) of section 268 shall stand quashed and set aside only on the ground that the said notices could not have been issued only on the basis of the report of a Committee constituted under clause (d) of Regulation 24.6 of the DC Regulations;

(II) We hold that the opinion recorded by the

aforesaid Committee in its meeting dated 28th February 2018 and the conclusions drawn by the said Committee are not legal and valid only on the ground that the Committee has not made any independent application of mind;

(III) We also make it clear that this order will not preclude the appropriate Authority from exercising its power under any of the provisions of sections 264 and 268 of the said Act in accordance with law;

(IV) Writ petitions are disposed of on above terms

(V) We permit the amendment in W.P.Nos.4935, 4936, 4938, 4940, 4960 of 2018 which is already carried out in terms of the order passed in the companion matters. Amendment to be carried out within a period of two weeks from the date on which this order is uploaded.

(RIYAZ.I.CHAGLA,J.)

(A.S.OKA,J.)

Shubhashri
Shridhar
Pathak
Digitally
signed by
Shubhashri
Shridhar
Pathak
Date:
2018.07.25
14:55:35
+0530