

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.523 OF 2018
ALONG WITH
CIVIL APPLICATION NO.699 OF 2018

Muslim Ambulance Society, Mumbai & Anr. Appellants-Applicants
V/s.
The Municipal Corporation of
Greater Mumbai and Ors. Respondents

Mr. G.S. Godbole, a/w. Ms. Simeen Shaikh and Ms. Priyanka Gharge, I/by
M/s. S.K. Srivastava and Co., for the Appellants-Applicants.

Mr. Narendra V. Walawalkar, Senior Counsel, a/w. Mrs. Madhuri More,
for the Respondent-MCGM.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 23RD OCTOBER, 2018.

P.C. :

1. Heard Mr. Godbole, learned counsel for the Appellants, and
Mr. Walawalkar, learned Senior Counsel for the Respondent-Municipal
Corporation.

2. This Appeal takes an exception to the order dated 5th May 2018
passed by the City Civil Court, Mumbai, thereby dismissing the Notice of
Motion No.1313 of 2018 filed in L.C. Suit No.1163 of 2018. The said Notice
of Motion was taken out by the Appellants herein, restraining the

Respondent-Municipal Corporation from taking any action in pursuance of the various notices issued under Section 354 of the Mumbai Municipal Corporation Act, 1888, and further from implementing the 'Report' of the 'Technical Advisory Committee', dated 11th January 2018.

3. The submission of learned counsel for the Appellants is that, the condition of the suit building is not such as it needs to be demolished and reconstructed. On the contrary, according to him, the building can very well be repaired, as it is only consisting of 'Ground + One' structure and 97% of the structure is of steel frame. It is further submitted that, the Appellants are conducting the charitable work of providing 'Dialysis Treatment' to the needy patients at the minimum charges and if the suit structure is demolished, the needy persons in the locality will suffer. The photographs of the suit structure are produced on record to show that, the Respondent-Municipal Corporation has taken only the selective photographs of the particular portions and now the same position, as seen in the photographs produced on record by the Appellants, is clear that the suit structure is not of such a dilapidated or dangerous or precarious nature that it needs demolition forthwith. Further, according to learned counsel for the Appellants, the Appellants are ready to carry out requisite repairs to the suit structure at their own costs and during that period, the Appellants can also keep the suit premises locked and sealed.

4. It is also submitted that, the 'Technical Advisory Committee', (*for short, "the TAC"*), has not followed the directions given by this Court vide its order dated 23rd June 2014 passed in O.O.C.J. Writ Petition (Lodging) No.1135 of 2014. The TAC has not carried out requisite tests, which were directed by this Court, and, therefore, an independent Structural Engineer may be appointed to conduct those tests and till then, various notices issued by the Respondent-Municipal Corporation and the 'Report' of the TAC should not be implemented.

5. However, the 'Report' of the TAC goes to show that, in addition to the Structural Engineer Mr. G.H. Khan, who was appointed by the Appellants herein and who has also stated that the slab needs repairs by removing/replacing the Ladi-Coba-Ladi-Slab; W.C. and Bathroom portion is in highly dilapidated condition and requires major repairs etc., there is Mr. Ganesh More, who was appointed as 'Representative' of M/s. Pentacle Consultant (I) Private Limited, who has filed his 'Report' and apprised the TAC that, the suit structure is mainly a load bearing structure and the first floor is extended using I-Section girder/beams, columns and M.S. angle ladi coba slab. The ND Test carried out indicated high levels of corrosion and doubtful quality of concrete. The first floor slab was also found highly corroded and it was noticed that the entire slab will have to be recasted. The toilet blocks were also highly deteriorated and hence, it was impossible to carry out the repairs, as

there is no space around the outer periphery for strengthening the footing, columns, construction of scaffolding for carrying out the repair works externally. Hence, the opinion was clearly expressed that, the building will have to be evacuated during the repairs, as the strengthening is required both externally as well as internally and hence, Mr. Ganesh More has expressed the opinion that, building needs to be evacuated and demolished immediately.

6. The TAC has considered this 'Report' and had itself carried out inspection of the suit building and corroborated the findings and the opinion of Mr. Ganesh More. It held that,

“The details of the foundation and other Structural Members are not known, as the drawings of the original structure were not available. The structure consisted of RCC Structural Members, load bearing walls and steel sections and predicting the stability of this kind of composite structure was very difficult. The norms of fire safety, emergency escapes and other safety measures required for hospital structure are not seen implemented.”

7. The TAC has also opined that,

“The ND Tests conducted by M/s. Pentacle Consultant (I) Pvt. Ltd. are sufficient to judge the quality and strength of the concrete and steel and it was impossible to carry out the repairs, as there was hardly any open space around the outer periphery for strengthening the footing, columns, construction of

scaffolding for carrying out the repair works externally.”

8. Hence, the TAC was of the unanimous opinion that,

“The building, which is being used as hospital on site is in dilapidated condition. The repair methodology and repair cost suggested by the Structural Engineer of the Appellants Mr. G.H. Khan, is not realistic, practical and acceptable. In case of any untoward incidence, it may endanger the life and property of the residents and the people residing in adjoining properties and passers-by and, therefore, the said building would not be safe for habitation and needs to be vacated and demolished immediately, by following the due process of law, under the supervision of the Structural Consultant.”

9. Thus, the 'Report' of the TAC is more than sufficient to reveal that, the TAC has considered all the necessary aspects for arriving at its conclusion; especially having regard to the fact that the suit structure is being used for the treatment of the dialysis patients, some more safety measures are required, and thereafter the TAC classified the said structure as 'C-I' for the purpose of immediate demolition.

10. Though it is the contention of the Appellants that, the required tests, as directed by this Court in its order dated 23rd June 2014, were not carried out, it needs to be stated that, that is not the mandate as

such. As held by the Division Bench of this Court in the case of *Bharat Choksey & Ors. Vs. LIC of India & Ors., 2015 (6) Bom.C.R. 152*, the guidelines given in the Writ Petition No.1135 of 2014 cannot be read as if they are the provision of a statute. In few cases, there will be emergent or extra-ordinary situations, which require departure from those guidelines. Here in the case, already the Structural Engineer Mr. Ganesh More has carried out ND Test, which was essential for the purpose of this structure. Hence, there was nothing wrong on TAC relying upon the said 'Report'. Moreover, it is pertinent to note that, the TAC consists of the experts in the field. It has evaluated the 'Reports' filed by the Structural Engineer of the Appellants and also the independent report of Mr. Ganesh More, the 'Representative' of M/s. Pentacle Consultant (I) Pvt. Ltd., and thereafter, on its own visit and on perusal of the internal and the external site, had arrived at an independent opinion. The 'Report' of the TAC is not at all challenged on the count that it is malafide, partial or in any way not independent.

11. In such circumstances, this Court cannot sit in Appeal over the said 'Report' of the TAC to hold that, the said 'Report' is not correct or should not be accepted. Hence, having regard to the said 'Report' of the TAC, the Trial Court has rightly rejected the relief of interim injunction. In Appeal from such discretionary order, no interference is warranted. The Appeal, therefore, stands dismissed.

12. At this stage, learned counsel for the Appellants seeks extension of ad-interim relief for a period of four weeks, in order to enable the Appellants to approach the Hon'ble Supreme Court.

13. Learned Senior Counsel for the Respondent-Municipal Corporation takes strong objection thereto.

14. Considering that the said order of ad-interim relief is running since last about three months, in order to enable the Appellants to approach the Hon'ble Supreme Court, the order of ad-interim relief is extended for a period of two weeks from today, subject to filing of fresh undertaking by the Appellants in the 'Registry' of this Court within a period of one week from today stating that, the Appellants will be alone responsible and neither the Respondent-Municipal Corporation or any other Authority will be responsible, if any untoward incident takes place.

15. In view of the dismissal of the Appeal, Civil Application No.699 of 2018 pending in the Appeal, does not survive and the same stands disposed off as infructuous.

[DR. SHALINI PHANSALKAR-JOSHI, J.]