

Sarnobat

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

**APPEAL FROM ORDER (STAMP) NO. 18446 OF 2018
ALONGWITH
CIVIL APPLICATION (STAMP) NO. 18448 OF 2018**

Seth C. V. Dani High School. ... Appellant.
Vs.
Municipal Corporation for Greater Mumbai
& Anr. ... Respondents.

Mr. Jitendra G. Damani, for the Appellant.
Mr. N. V. Walawalkar a/w Mrs. Madhuri More, for the Respondent No.1.

CORAM : V. M. DESHPANDE, J.

DATE : 17th JULY, 2018.

ORAL JUDGMENT :

1. **Admit.** Taken up for final hearing for final disposal.
2. The present appeal takes exception to the order dated 11th May, 2018 passed by learned Judge, City Civil Court, Dindoshi, Mumbai in Notice of Motion No. 1703 of 2018 in L.C. Suit No. 1408 of 2018. By the impugned order the learned Court below dismissed the Notice of Motion and thereby refused to grant injunction pending suit in favour of the appellant.
3. The appellant approaches to the Court below with a Suit bearing L.C. Suit No. 1408 of 2018 wherein it is asserted that appellant is a tenant in respect of premises of building known as Shakti Niwas,

situated at Narayandas Joshi Cross Road, at Village Malad, opposite Kandivali Post Office, Kandivali (West) Mumbai. According to the appellant they are running education center and imparting education by running primary and secondary school in the suit premises since last 42 to 45 years.

4. The appellant/plaintiff approached to the Court below in Suit with following prayers;

(a) That this Hon'ble Court be pleased to pass order and decree declaring the Notice issued by Defendants bearing No. AC/R/S/BF-05/354/292 of 2012 dt. 4-8-2012 read with letter of the Defendant dt. 9-4-2018 along with the Report of the TAC dt. 13.3.2018 be held as invalid, not subsisting, bogus, manipulated, false, sham and colourful document apart from the same being bad in law and hence, not binding upon the Plaintiff and the same be set aside.

(b) That the defendants, its Engineers, workers be restrained by permanent order and Injunction of this Hon'ble Court to not to do any act, deed or thing including that of eviction or demolition of the suit premises i.e. the ground plus first floor of the building Shakti Niwas situated at Narayandas Joshi Cross Lane, Opp. Post Office, Kandivali (W), Mumbai 400 067, or any part thereof, pursuant to the said impugned Notice dt. 4.8.2012 read with the letter dt. 9.4.2018 along with the TAC Report dt. 13.3.2018 or otherwise.

(c) That the Defendants, its Engineers, workers be restrained by order and Injunction of this Hon'ble Court to not to do any act, deed or thing including that of eviction on demolition of the suit premises i.e. the ground plus first floor of the building, Shakti Niwas situated at Narayandas Joshi Cross Lane, Opp. Post Office, kandivli (W), Mumbai 400 067 or any part thereof, pursuant to the said impugned Notice dt. 4.8.2012 read with the letter dt. 9.4.2018 along with the TAC Report dt. 13.3.2018 or otherwise.

5. Along with the Suit, Notice of Motion bearing No. 1703 of 2018 was taken out for injunction. The said application was contested by the respondent/defendant/Corporation and after hearing the parties, the said was rejected. Hence, this appeal.

6. I have heard Shri Jitendra Damani the learned counsel for the appellant and Shri Walawalkar the learned Senior advocate for the Corporation. According to the learned counsel for appellant, the notice which is impugned in the suit is nothing but an attempt to evict the appellant without following due process of law. His second submission is that the building in question is not dilapidated and the report of TAC i.e. Technical Advisory Committee is under challenge in the Suit and therefore, till the suit is decided it has no value. He further submitted that there are contradictory structural auditors report. It is also his submission that on earlier occasion the recommendation of TAC was

found to be bad by the Division Bench of this Court in Writ Petition No. 1169 of 2017. He therefore, submitted that the order impugned in appeal requires interference by this Court by allowing the appeal.

7. Per contra the learned Senior advocate for the Corporation has supported the impugned order. He submitted that the report of TAC dated 13.03.2018 is very much clear and which shows that the condition of building is highly dilapidated and it is not habitable and requires to be vacated and demolished immediately. He therefore, submitted that the appeal be dismissed.

8. During the course of the submission it is clear to this Court that the building, entire premises Shakti Niwas consisting of 23 tenants was taken by one M/s. Prime Realtors and one Vinay N. Jain the partner. These two are not made the parties to the Suit either as plaintiffs or defendants.

9. This notice under Section 354 of MMC Act dated 4.8.2012 which was addressed to M/s. Prime Realtors was questioned by the said noticee by filing the Writ Petition before this Court bearing Writ Petition (L) No. 589 of 2014 and the Division Bench of this Court on 9th July, 2014 passed an order indicating therein the statement of Corporation that the building is not listed in C-1 category and the occupants occupying shall be on their risk and consequences. The present appellant along with other tenants gave a notice to the

Commissioner of Municipal Corporation through their advocate calling them not to take any steps in the matter.

10. The appellant also approached to this Court in Writ Petition No. 2170 of 2016 in its Ordinary Original Civil Jurisdiction and on 9th August, 2016 the Division Bench permitted the Corporation to seal the school premises pending the fresh structural audit report from Vijetia Mumbai as per the willingness shown by the present appellant.

11. Be that as it may. The structural auditor of the appellant submitted report so also the structural auditor of the Corporation also submitted the report. The said was placed before the TAC and it appears that the TAC did not accept the report filed by the structural auditor of the appellant. The appellant therefore, filed a Writ Petition No. 1169 of 2017 making the grievance before the Division Bench on the ground that opportunity was not given to the structural auditor of the appellant to participate in TAC proceedings. On 8th December, 2017 Division Bench disposed of the said Writ Petition by following observations;

“We find that the petitioners or their Technical Consultant/Structural Engineer/Architect did not participate in the proceedings before the TAC, as they were not granted any opportunity to do so. The petitioners were also not permitted to submit the report of their Technical Consultant. We find that

the action on the part of the corporation of referring the matter to the TAC though no report of the Structural Engineer of the tenants-occupiers was submitted to the corporation is illegal. The TAC report would be bad in law as neither the petitioner nor the Technical Consultant/Structural Engineer/Architect of the petitioner were permitted to participate in the proceedings before the TAC.”

12. Consequent to the said Writ Petition M/s. N. M. Consultant the structural auditor of the appellant filed a report. According to the said report, the condition of the building is not that bad and no evacuation is necessary and it requires only structural repair. Some of the tenants also appointed M/s. Space Design and Development as their structural auditor and according to the report of said structural auditor it requires to be evacuated requiring major structural repairs. The owner of the building structural auditor gave a report that the building needs to be vacated and it requires to be demolished. M/s. Rajesh Consultant was appointed by TAC as per the directions of this Court and according to the said auditor the building is C-1 category and it requires vacation and to be demolished.

13. The TAC held further meeting on 13th March, 2018 and in that meeting Shri Jatin Gohil representative of M/s. N. M. Consultant, the structural auditor of the appellant was present along with others.

The TAC after deliberations with the representatives of all the parties reached to the conclusion unanimously that the structure is not habitable and needs to be vacated and demolished immediately. Initially this was challenged by the appellant by filing a Writ Petition No. 1345 of 2018 and on 24th April, 2018 the Division Bench of this Court found that many disputed question on facts are involved and only on that ground declined to entertain the Writ Petition under Article 226 of the Constitution of India and Writ Petition was rejected. However, at that time the remedy of the appellant to approach before the Civil Court was kept open and accordingly the Suit in question was filed.

14. The submission of the learned counsel for the appellant that the earlier TAC report was rejected by this Court in W.P. No. 1169 of 2017, in my view is not correct. What was observed by the Division Bench of this Court in the said W.P. that since the opportunity to the structural auditor of the appellant was not given the Division bench referred this matter to TAC for preferring fresh report after carrying the test as directed in W.P. No. 1135 of 2014 within three months. It is not in dispute that thereafter, the further inspection took place from all the sides and the meeting of TAC was held on 13th March, 2018. It is also an admitted position that in the said meeting the structural auditor of the appellant M/s N. M. Consultant was present through his representative Shri Jatin Gohil.

15. The TAC consists of three highly qualified technical experts. This committee is constituted under the guidelines of High Court in the Writ Petition.

16. In my view Court should not substitute its own view in place of the view expressed by technical expert since, the Court is not possessing that expertise which the member of TAC possesses.

17. As per the report of 5th March, 2018, the site was inspected by the TAC members. At that time it was noticed that the school was already sealed as per the order passed by this Court on 9th August, 2016 in W.P. No. 2170 of 2016. It was seen that many of the columns are developed major vertical cracks, reinforcement is exposed and in corroded condition. It was also found during the spot inspection that the structural members of the building like columns, beams, slab and walls are also in dangerous condition. Cracks were found in structural members such as columns, beams, slabs and walls. During inspection it was also found on the rear side of the column it is critical and alarming condition and it may endanger the life and property of the adjoining properties and passersby. Few trees are also seen growing on the building and the roots of the trees have been penetrated into the structural members and have affected the structural stability of the structure. It is to be noted that all these observations were discussed in detail by the TAC members in the meeting dated 13th March, 2018.

From the report it is clear that it would be useful to refer here what was the expression of Jatin Gohil the representative of M/s. N. M. Consultant for and on behalf of the appellant and which is reproduced herein under;

“Shri Jatin Gohi, representing M/s. N. M. Consultants apprised to all the TAC members that the building is in highly dilapidated condition due to age of the building and lack of proper maintenance, but still the building can be repaired. Many of the RCC structural members viz. Columns, beams, slabs and staircase have developed cracks at many places, the reinforcement is exposed and severally corroded . These members will require major structural repairs and rest of the structure will require need base repairs. The Core Test result indicates medium quality of concrete and hence, they have recommended for repair. The repair cost of the building would be approximately Rs.400.00 per sq.ft. And if the repairs are carried out the life of the structure will be enhanced by 5 years. Further TAC members felt that the repair cost and enhanced life suggested by Shri Jatin Gohil is not practical looking at the deterioration of the building. Shri Jatin Gohil agreed that the building is in highly dilapidated condition, further he apprised that the building is already been repaired twice and if repaired again the life will enhance by 5 years only.”

18. From the aforesaid it is absolutely clear even the structural consultant of the appellant agreed that the building is in highly dilapidated condition and if it is repaired its life can be enhanced by 5 years only.

19. The submission of the counsel for appellant that till the Suit is decided till that time Court should not accept TAC report is not correct. As per the report of said expert committee the building is in highly dilapidated condition and it needs to be pulled down. The Suit will be decided in due course of time. However, till that time highly dilapidated building cannot be permitted to stand as it will endanger to the life and property of citizens. Even if Suit is decreed the rights of appellant being tenant are well protected.

20. AS merely because the building will be demolished the appellant will not loose his tenancy rights. Upon reconstruction of the building it will always open to the appellant for claiming the area which was in his occupation prior to demolition or as agreed between the parties.

21. Therefore, in my view no prejudice will be caused to the appellant even if the building is demolished. On the contrary if the injunction is granted it will endanger to the life and property of the passersby. The school of the appellant is already closed and already

sealed under the orders of this Court. Therefore, there is no prejudice to the appellant that they are unable to carry the educational activities.

22. The aforesaid discussion in my view, allows me to pass an order of dismissal of the appeal.

23. At this stage, the learned counsel for the appellant submits that the order of status-quo granted on 5th July, 2018 be continued for further four weeks. Normally, the Court always grant such relief. However, in the present case I am not inclined since if during this four weeks, in this monsoon season if any untoward incident occurs, and if the building collapsed it will cause immense loss not only to the property, but to the human life. Hence, the request for extension of the order of status-quo till further four weeks is also rejected.

ORDER

I) Appeal is dismissed.

II) All Civil Applications are also dismissed.

[V. M. DESHPANDE,J.]