

Jsn

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

WRIT PETITION NO. 3365 OF 2017

Ganesh Kripa CHS Ltd. ... Petitioner
Versus
Panvel Municipal Corporation and Ors. ... Respondents

WRIT PETITION NO. 11043 OF 2017

Shri Dattatraya Mhatre & Ors. ... Petitioners
Versus
State of Maharashtra & Ors. ... Respondents

Mr. Atul Damle, Senior Advocate, I/b Mr. Vaibhav Anant Sugdare for the Petitioner in WP No. 3365 of 2017 and for the Respondent No. 5 in WP No. 11043 of 2017.

Mr. Rompal Kohli, with Mr. Vikram Chavan with Ms. Niharika S. Waradkar, I/b C.K. Legal for the Petitioner in WP No. 11043 of 2017 and for the Respondent Nos. 7 to 12 in WP No. 3365 of 2017.

Mr. Sarang Satish Aradhya for the Respondent No.1 in WP /3365 of 2017.

Mr. Prashant More, AGP for Respondent Nos. 4 and 5 in WP No. 3365 of 2017 and for the Respondent No.1 in WP No. 11043 of 2017.

Mr. T.D. Deshmukh, for the Respondent No.6 in WP No. 3365 of 2017.

Jitendra
Shankar
Nijasure

Digitally signed
by Jitendra
Shankar Nijasure
Date: 2018.08.16
18:45:42 +0530

**CORAM: A.S. OKA AND
RIYAZ I. CHAGLA, JJ.**
DATE: 13TH JULY, 2018

PC:-

1. Considering the narrow controversy involved in the Writ Petitions, the same are taken up for final disposal at admission stage. Both the Petitions concern the same building. The erstwhile

Panvel Municipal Council (now the Municipal Corporation of City of Panvel) issued a notice dated 15th September, 2016 by exercising power under Section 195 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965 (for short "the said Act of 1965"). By the said notice, the occupants of the building were called upon to remove themselves from the building as the building was in a dangerous condition. The notice calls upon the occupants to immediately stop the use of the building. The notice further calls upon occupants either to get the building repaired under the supervision of an expert and produce certificate or to demolish the building over.

2. Writ Petition No. 3365 of 2017 has been filed essentially to seek enforcement of the said notice under Section 195 of the said Act of 1965. Writ Petition No. 11043 of 2017 has been filed by the occupants for challenging the said notice on various grounds.

3. By the order dated 30th November, 2017, a Division Bench of this Court noted that there were conflicting reports submitted by structural engineers appointed by the landlord on one side and tenants on the other. Therefore, a direction was issued to the Municipal Corporation to conduct inspection through engineers / specialised officer of the Municipal Corporation. It appears that the

Municipal Corporation engaged services of the department of Civil and Environmental Engineering of Veermata Jijabai Technological Institute (for short "VJTI") to make structural assessment of the buildings. In March, 2018, there is a report submitted by VJTI after conducting structural audit of the buildings.

4. Now that a latest report is available from an expert agency like VJTI, it will be appropriate if the Municipal Corporation considers the said report and examines whether the exercise of powers under Section 264 of the Maharashtra Municipal Corporations Act, 1949 (for short "the said Act of 1949") is necessary. In view of the subsequent report, it is not necessary for us to go into challenge to the impugned notice dated 15th September, 2016. Now the issue of structural status of building in question will have to be decided by the Municipal Corporation after taking into consideration the report submitted by the VJTI. Therefore, now the impugned notice dated 15th September, 2016 cannot be acted upon. We, therefore, propose to direct the Municipal Corporation to take appropriate decision after considering the report of VJTI and after a fresh site visit by expert Municipal Officers, if necessary. As we are fixing a time bound schedule to enable Municipal Corporation to take a decision and to initiate action, we must clarify that the persons who are

occupying the premises in the subject building will continue to occupy the same at their own risk, as observed in the order of this Court dated 30th November, 2017.

5. While of disposing of the Petitions, we make it clear that we have made no adjudication on the present structural status of the building. It is ultimately for the Municipal Corporation to decide whether this building needs to be demolished immediately or whether the building can be repaired. We have made no adjudication on the said issues. Accordingly, we dispose of the Petitions by passing following order:-

i) We direct the Panvel Municipal Corporation to consider the report of VJTI, if necessary, after ordering an inspection of the building by expert Municipal Officers. After considering a said report of VJTI and report, if any, of the Municipal Officers, the Municipal Corporation will take appropriate decision on the issue whether it is necessary to exercise the powers under Section 264 of the said Act of 1949 by either directing demolition of the building or carrying out the repairs. The said decision shall be taken within a period of one month from the date on which this order is uploaded. The decision taken shall be

communicated to the parties to the Petitions;

ii) If the Municipal Corporation decides to take action under Section 264 of the said Act of 1949, notices shall be accordingly issued to the parties to the Petition and all other affected persons. If a notice is issued calling upon demolition of the building or for immediately stopping the use of the building, no action shall be taken on for a period of 15 days from the date on which the notice is served on the Petitioner in WP No. 11043 of 2017;

iii) We make it clear that the date of communication of the decision, the Petitioners in Writ Petition No. 11043 of 2017 will continue to occupy their respective premises at their own risk;

iv) In view of the above directions, we direct that notice dated 15th September, 2016 issued by the erstwhile Panvel Municipal Council shall not be implemented;

v) We make it clear that we have made no adjudication on the present structural status of the subject buildings and all issues are left open to be

decided by the Municipal Corporation;

vi) Both the Petitions are disposed of on above terms.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)