

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

**APPEAL FROM ORDER NO. 195 OF 2015
IN
NOTICE OF MOTION NO. 4371 OF 2013
IN
L.C. SUIT NO. 4287 OF 2013**

Mrs. Ilaben Sureshbhai Zaveri & Ors. .. Appellants
Vs.
Brihan Mumbai Municipal Corporation
& Ors. .. Respondents

Mr.Prashant Chavan, Advocate I/b Navdeep Vora Associates for appellants.

Mrs. Madhuri More, Advocate for respondent Nos.1.

Mr.Ganesh S. Bhat, Advocate for respondent No.4.

**CORAM : A.S. CHANDURKAR, J.
DATE : 26TH NOVEMBER 2018**

P.C.

1 This appeal has been preferred by some of the plaintiffs who are aggrieved by the order passed by the trial Court rejecting the Notice of Motion as filed in the suit and refusing to grant interim relief as prayed for.

2 It is the case of the appellants that they are the tenants of the building owned by the respondent No.4 herein and each plaintiff has his/her respective flat therein. The respondent No.4 vide letter stated that the landlord was interested in re-developing the property and decided to construct a new building by demolishing the existing building. A notice

under Section 354 of the Mumbai Municipal Corporation Act, 1888 was issued in the year 2009. However, the same was not acted upon. A fresh Notice dated 21st October 2013 under Section 354 of the said Act was again issued. According to the plaintiffs, the building in question was not in a dilapidated condition and it did not require demolition. In that view of the matter, suit seeking declaration of the illegality of the notice dated 21st October 2013 came to be filed and a Notice of Motion seeking interim protection was also moved.

3 The defendant No.4 along with the learned counsel for the Municipal Corporation opposed the aforesaid application. It was stated that the building in question was in a dilapidated condition and therefore was required to be demolished. The report of the Structural Engineer in the year 2013 suggested that the building was unfit for occupation and was liable to be demolished.

4 The trial Court, after considering the respective contentions, refused to grant any interim relief. Being aggrieved, the plaintiffs have filed the present appeal.

5 Shri Prashant Chavan, the learned counsel for the appellants submitted that in the light of the guidelines as laid down in the *Municipal*

Corporation of Greater Mumbai through the Municipal Commissioner Vs. State of Maharashtra¹, it was necessary for the Municipal Corporation to have referred the matter to the Technical Advisory Committee (TAC) especially when the report of the Structural Engineer as submitted by the appellants indicated that the building was not in a dilapidated condition. Without referring the matter to the TAC, the impugned notice came to be issued without complying with the guidelines as laid down. The learned counsel referred the report filed by the Structural Engineer appointed by the appellants dated 24th April 2013 to indicate the stability of the building. It was thus submitted that the trial Court ought to have considered the said report and by granting necessary interim relief ought to have protected the possession of the appellants.

6 Shri Ganesh B. Bhat, the learned counsel for the respondent No.4 supported the impugned order. According to him the Municipal Corporation rightly did not refer the matter to the TAC on the ground that there was no conflicting report. The appellants by merely relying upon the report of their Structural Engineer had only commented upon which the report prepared by the defendant No.4 sought reference to the TAC. It was further submitted that defendant No.4 had already filed suit seeking eviction of the tenants but was also willing to provide alternate

1 OS.Writ Petition (L.) No. 1135 of 2014 dt. 23.06.2014

accommodation to each of the appellants.

7 Smt.Madhuri More, the learned counsel for the Municipal Corporation also supported the impugned order. The counsel submitted that during pendency of the proceedings, part of the building had collapsed.

8 I have heard the learned counsel for parties at length and I have perused the documents on record.

9 The report of the Structural Engineer relied upon by the defendant No.4 clarified that the building in question is in C-1 category. Though in the year 2009, the notice as issued under Section 354 of the said Act was not acted upon, the subsequent notice dated 21st November 2013 indicates that the building was found in a ruinous condition and was dangerous for occupation. As per the guidelines laid down in *Municipal Corporation of Greater Mumbai* (Supra), it is only when there are conflicting reports on the status of the building, that the matter has to be referred to the TAC.

10 As noted above, the report relied upon by the appellants merely offers comments on the report submitted on behalf of the defendant No.4. The trial Court was, therefore, justified in observing that there were no

conflicting reports on record. It is found that the trial Court after considering all relevant aspects had refused to grant interim relief. The same was done in the year 2014 after which a period of four years has been elapsed. I do not find any justifiable legal reason to accept the contentions of the appellants. Accordingly, the order passed by the trial Court stands confirmed.

It is, however, clarified that the observations made in the order passed by the trial Court or in this order are only for deciding the notice of motion. The suit shall be decided on its own merits in accordance with law.

11 The Appeal from Order stands dismissed with no order as to costs. Pending civil applications are also disposed of.

(A.S. CHANDURKAR, J.)