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

**APPEAL FROM ORDER (ST) NO.30732 OF 2018
WITH
CIVIL APPLICATION (ST) NO.30735 OF 2018**

Saroj Maruti Gaikwad	...	Appellant
V/s.		
Municipal Corporation of Greater Mumbai and anr	...	Respondents

**ALONGWITH
APPEAL FROM ORDER (ST) NO.30741 OF 2018
WITH
CIVIL APPLICATION (ST) NO.30744 OF 2018**

Dr. Arvind R. Sawant and ors	...	Appellants
V/s.		
Municipal Corporation of Greater Mumbai and anr	...	Respondents

**ALONGWITH
APPEAL FROM ORDER (ST) NO.30742 OF 2018
WITH
CIVIL APPLICATION (ST) NO.30747 OF 2018**

Smt. Vimladevi P. Jain and ors	...	Appellants
V/s.		
Municipal Corporation of Greater Mumbai and anr	...	Respondents

**ALONGWITH
APPEAL FROM ORDER (ST) NO.30751 OF 2018
WITH
CIVIL APPLICATION (ST) NO.30753 OF 2018**

Suresh S.Jain	...	Appellant
V/s.		
Municipal Corporation of Greater		
Mumbai and anr	...	Respondents

**ALONGWITH
APPEAL FROM ORDER (ST) NO.30755 OF 2018
WITH
CIVIL APPLICATION (ST) NO.30758 OF 2018**

Yatesh S. Jain	...	Appellant
V/s.		
Municipal Corporation of Greater		
Mumbai and anr	...	Respondents

**ALONGWITH
APPEAL FROM ORDER (ST) NO.30760 OF 2018
WITH
CIVIL APPLICATION (ST) NO.30763 OF 2018**

Arvind G.Arte	...	Appellant
V/s.		
Municipal Corporation of Greater		
Mumbai and anr	...	Respondents

Mr. Atul S. Singh, for the appellant.
Mrs. Madhuri More, for respondent corporation.
Mr. Vikhil Dhoka a/w Ms. Shyli Shetty i/by M/s Solicis
for respondent No.2.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 1st NOVEMBER, 2018.

P.C. :

- 1] Heard learned counsel for the appellants and respondents.
- 2] These Appeals from Order take an exception to the

identical orders dated 9.10.2018, passed by the City Civil Court, Dindoshi, Mumbai, thereby refusing ad-interim relief in terms of prayer clause (a) in the Notices of Motion in the suits filed by the present appellants.

3] The Appellants are the original plaintiffs and they are challenging the notices issued by the Municipal Corporation under Section 354 of the Mumbai Municipal Corporation Act, (for short called as, “MMC Act”) dated 14.8.2014 and the report of TAC. According to appellants, they are in possession of ground floor premises and conducting their respective businesses in the said shops. It is their grievance that the condition of the building is not such that it requires immediate demolition. However, at the instance of respondent No.2 the landlord, the respondent No.1 Municipal Corporation has issued these Notices under Section 354 of MMC Act and therefore, they had prayed for the relief of interim injunction, restraining respondent Municipal Corporation from taking any action in pursuance thereof.

4] As the trial Court has, initially refused to grant such ad-interim relief, being aggrieved thereby, they had preferred Appeal from Order (St) No.29090 of 2017, which came to be disposed of by this Court, vide order dated 20.11.2017. It was found by this Court

that the Municipal Corporation was not in a position to inform this Court, whether it has followed the guideline Nos. 9 (d) (I) and(ii) and 9 (e) and (f), given by the Division Bench of this Court, in Writ Petition (L) No.1135 of 2014, by its order dated 23.6.2014. Under these circumstances, this Court, has passed the following directions, as per paragraph No.8 of it's order:-

“8. Technical Advisory Committee to carry out a fresh visual inspection and the tests which are specified as per guidelines given in 9(d) (I) and (ii) by the division Bench of this Court in Writ Petition (L) No.1135 of 2014 and also follow the guidelines given in 9(e) and partly 9(f) within a period of three months from today. After receipt of the report of Technical Advisory Committee, further protection of two weeks is given to the appellants/plaintiffs”.

5] Thus, it was directed to TAC to carry out a fresh visual inspection and various tests which are specified as per guidelines given in 9(d) (i) and (ii) by the Division Bench of this Court in Writ Petition (L) No.1135 of 2014 and also to follow the guidelines given in 9(e) and partly 9(f), within a period of three months. It was stated that after receipt of the report of Technical Advisory Committee, the appellants were at liberty to approach the trial Court again.

6] Accordingly TAC complied with the directions given by

this Court and again notices were issued to the appellants, calling upon them to vacate the suit premises, as the building has been categorized as “C-1”.

7] Being aggrieved by the said notice, appellants again approached the trial Court, contending inter alia that TAC has not complied with the directions given by this Court, completely and further also pointed out that TAC has not even complied with the Circular issued by the Municipal Corporation on 10.11.2017. It was submitted that the inspection was not carried out by the TAC nor the various tests were conducted by TAC. Moreover, the measurement which is carried out does not include the premises in occupation of the two appellants viz. Saroj Gaikwad and Hitesh Jain. Therefore, it was contended that without the measurement of their premises, if the suit building is demolished their rights will be affected and hence it was necessary to restrain respondent corporation from taking any action in pursuance of the TAC report.

8] The trial Court has after considering the submissions advanced at Bar, rejected the ad-interim relief, holding that all the requisite guidelines given by this Court in Writ Petition (L) No.1135 of 2014 and the Circular, issued by the Municipal Corporation are substantially followed. Hence, no interference is warranted restraining respondent corporation from taking any action in

pursuance of the said report.

9] As regards the grievance of these two appellants that their premises are not measured, it was observed by the trial Court that as per the guideline No.1.09, it was clearly mentioned that action taken by the Municipal Corporation will not affect inter-se rights of the owner or tenants or occupiers including the right of re-occupation in any manner. Hence it was held by the trial Court that the rights of these two appellants also stand protected, if they are having any right especially considering that their structures are not appearing in the approved plan and therefore, their structures being unauthorized and not regularized, so far at prima face stage they do not appear to be having such right. The trial Court, further found that the building is in ruinous and dilapidated condition and not fit for human habitation. The first floor is already vacated and in such situation, no prima face case exists in favour of the appellants. Therefore the trial Court has refused to grant interim relief

10] While challenging this order passed by the trial Court, same submissions which were advanced before the trial Court are advanced in these Appeals also. In the first place, it is submitted that the TAC had not complied with the order passed by this Court especially the compliance of guidelines given in 9 (d) (i) (ii) and 9(e) and 9(f), issued by this Court in W.P. (L) No.1135 of 2014.

11] In order to appreciate this contention, it would be necessary to reproduce the guidelines which were issued by this Court, in the said Writ Petition , in clause 9 (d) (i) (ii), 9(e) and 9(f):-

“9(d)

i) Carry out a visual inspection of the state of the internal and external plaster, plumbing, drainage, whether the doors and windows close properly, whether steel in columns is exposed, whether there is settlement in the foundation, deflections/sagging, major cracks in columns/beams, seepages/leakages, staircase area and column condition, lift well walls, U.G. tank, O.H. tank , column condition, parapet at terraces, chhajjas, common areas, terrace water proofing.

ii) Carry out specific tests like ultrasonic pulse velocity test, rebound hammer test, half cell potential test, carbonation depth test, core test, chemical analysis, cement aggregate ration as maybe considered by TAC as necessary.

(e) If it is found after due notice that the building(s) is in a highly dangerous or in dilapidated condition, then in that event, the Corporation shall also make a list of the names of the tenants and/or occupiers in the said building and the carpet area of the premises in their respective occupation and possession including the floor at which the same has been occupied.

(f) A copy of such list will be furnished to the landlord and/or owner/builder of the said building. The corporation thereafter, will issue a notice under Section 354 of the said Act calling upon such tenants and/or occupiers to vacate the said premises and if such notice under Section 354 of the said Act has already been issued, then in that even the Corporation will give 7 days notice to such tenants/occupiers, copies whereof will be furnished to the landlord for vacating the said building(s). If such tenant and/or occupier is not available, the Corporation shall affix such notice or letter of Evacuation on any part of such premises”.

12] As per guidelines 9 (i), thus, TAC was to carry out visual inspection of the said building of internal and external plaster, plumbing, drainage, etc., and as per clause (ii), it was further to carry out specific tests like ultrasonic pulse velocity test etc., as may be considered necessary by the TAC. To show the compliance of these guidelines, learned counsel for respondent corporation has relied upon the report of TAC and its observations therein made in their meeting on 14.6.2018. The report shows that TAC has carried out the visual inspection of the suit site on 12.6.2018, and on the basis of the said visual inspection and the Structural Audit report, submitted earlier and thereafter by Avon Consultants, who has after carrying

out various tests of the said premises, as directed in guideline No. 9(d) (I) and(ii) of the Writ Petition (L) No.1134 of 2014.

13] Learned counsel for respondent No.2 has produced on record the Structural Audit report dated 12th April, 2018 which is submitted by Avon Consulting Engineers, who was appointed by the Municipal Corporation for carrying out structural audit report of this building. This report goes to show that Avon Consulting Engineers, has carried out all the tests which are mentioned above in guideline 9(d) (ii) laid down by this Court in W.P. (L) No.1135 of 2014. Thereafter Committee has given analysis as follows:-

“4.9 ANALYSIS

* Looking into all the aspects of the building condition and as per our detailed survey, we suggest that the building is beyond Repairs and needs too be pulled down as early as possible to avoid any collapse which might lead to any major accident at a later date.

* The Results of the non destructive tests are also in negative and are not to the acceptable limits.

* For any RCC framed structure the RCC components are like the bones in a body and hold the entire load of the body and any damage to the same has to be rectified immediately and cannot be left unattended for long period of time.

TAC has further given the suggestions as follows :-

“SUGGESTIONS:

We suggest that the building to be pulled down as early as possible to avoid any collapse which might lead to any major accident at a later date.

Looking into all the aspects of the building condition and as per our detailed survey, we suggest that the building should be vacated immediately to avoid any mishap that may occur at later date.

Necessary propping to be carried out immediately to avoid any mishap.

After carrying out comprehensive analysis of all the above reports, we have reached to the conclusion that the entire structure of the building should be demolished & reconstruct the structure with a good quality RCC Concrete in a planned manner under the Technical guidance and supervision of a competent consultant.

All inspection, observation and facts presented in this report relate to the findings as on the date of inspection. But the process of deterioration will continue”

14] Thus, there is complete compliance of the guidelines given by this Court in W.P. (L) No.1135 of 2014 by the TAC. When there is structural audit done by Avon Engineers, which was appointed ;by the Municipal Corporation itself, as TAC Committee cannot be expected to have expertise in all the matters, to carry out these requisite tests

and this report is not challenged and on the basis of this report TAC has arrived at its own opinion, no fault can be found with the TAC report so as to challenge the same on the ground that there was non compliance of the order passed by this Court.

15] Even as regards the guidelines issued under clause 9 (f) of the order passed in W. P. (L) No.1135 of 2014, the respondent Corporation has produced on record the measurements taken out by its Officers to which go to show that the authorized premises in occupation of the persons are measured on 24.7.2008 and it was informed to the occupiers accordingly.

16] As regards the grievances of the two appellants that the premises in their occupation were not measured, learned counsel for respondent No2 has pointed out the latest circular issued by the Municipal Corporation on 25.5.2018, which contains UB clause No.1.09 of the earlier circular one more additional clause. It reads as follows :-

“1.09 A.E (B & F), before issuing notice u/s 354 to pull down dilapidated structure, shall call upon the owner to submit a statement in writing signed by owner within 7 days stating therein the names of the occupiers of the building from his record, the area in occupation and location of premises in occupation, possession of each of the respective occupiers or tenants, as the case may be along

with supporting documents. The list of statement submitted by owner shall be along certified by Asstt. Commissioner. Copies of which shall be given to tenants/occupiers/owner.

If he/she fails to furnish the statement as above within the stipulated period , A.E. (B & F) and E.E. of the Ward shall make a list of the names of the tenants and/or occupiers in the said building and the carpet area of the premises in their respective occupation and possession including the floor at which the same has been occupied and copy shall be given to the tenants/occupiers/owner. The inspection report along with inventory report, photographs, video shooting shall be kept on record.

If approved plans are available, then area of tenants/occupants shall be certified as per approved plan; and if approved plans are not available, then existing area in occupation of tenants/occupants shall be certified. Area certified by Municipal Officer concerned will be final.

The area certified by the MCGM engineers shall not affect the inter-se rights of the owner or tenants or occupiers, including right of reoccupation, in any manner.”

17] Therefore, as per this clause, the Municipal Corporation was expected to measure the area of the tenants and occupants as per approved plan. Respondent No.2 has produced on record copy of the approved plan and the measurement sheet which shows that the corporation has measured the area in occupation of the tenants/occupants, as per approved plan.

18] The very contention of respondent No.2 is that as regards these two appellants, they have carried out unauthorized construction. Hence, in the approved plan, their construction is not appearing. Naturally Municipal Corporation is justified in not taking measurement of their structures. Moreover as per further clause of this circular also, the measurement of area certified by the corporation will not affect interse rights of the owner of tenants or occupiers including the right of reoccupation in any manner. Therefore, ultimately, if these appellants could succeed in proving their possession to be authorized and as per approved plan, their rights are not affected as such.

19] At this stage, it is important to consider the condition of the building. From the consistent report of the TAC and also of the structural report, are unequivocal that the condition of the building has become dilapidated, precarious and dangerous. Hence, Municipal Corporation cannot be restrained from taking action in pursuance of the notice issued by it, especially when the first floor of the building has already been vacated by the occupants, thereby clearly indicating that the condition is not worth the habitation. The photographs of the said suit premises are also produced by Municipal Corporation, which also clearly indicate that the condition of the said building has become precarious. As submitted by the Municipal

Corporation for respondent No.2, said building is situated in highly densely populated area, near Goregaon Railway station. Therefore, it will not only cause loss of human lives of the appellants who are running businesses on the ground floor, but if any damage is caused to the building, it may result in collapse of the building and the lives of the passersby and also adjacent occupants are also going to be in danger. As observed by the trial Court, human life is more precious. Hence, it is for their own interests also that appellants vacate the suit premises on their own. Moreover, their rights of reoccupation in the redeveloped building are always there and they are already protected. Learned counsel for respondent No.2 also points out that under Section 499 of the MMC Act, also their rights will not go away, but they will stand protected.

20] In view thereof, it has to be held that the trial Court has rightly rejected the relief of interim injunction. Hence, in the discretion exercised by the trial Court in refusing such relief, no interference is warranted at the hands of this Court. These Appeals from Order, being without any merit, stand dismissed.

21] In view of dismissal of Appeals, Civil Applications therein no more survive and they are disposed off accordingly.

22] At this stage, learned counsel for appellant seek extension of the order of status quo for period of two weeks, which request is

strongly resisted by learned counsel for respondent Municipal Corporation.

23] Considering the precarious condition of the suit building to which water connection is also disconnected, the order of status quo cannot be extended further. Therefore, this request stands rejected.

[DR.SHALINI PHANSALKAR-JOSHI, J.]