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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L)NO.1538 OF 2018

Mahendra Champaklal Mahta & Ors. ...Petitioners
vs.
Mumbai Municipal Corporation ...Respondent

Mr.Jamshed Ansari for the Petitioners
Ms Vandana Mahadik for the respondent

CORAM : A.S.OKA, &
RIYAZ.I.CHAGLA,JJ.
DATE : JUNE 4, 2018

P.C.:

1 The petitioners have impugned in this petition under Article 226 of the Constitution of India, the notice dated 18th April 2018 issued by the Mumbai Municipal Corporation (for short 'the said Municipal Corporation') addressed to the owner of the subject building. The said notice is based on the notice dated 3rd June 2009 issued by the said Municipal Corporation in exercise of the powers under section 354 of the Mumbai Municipal Corporation Act, 1888 (for short 'the said Act'). The notice dated 3rd June 2009 proceeds on the footing that the subject building has been classified as 'C-1' which is dangerous for human habitation and cannot be repaired. Therefore, the notice dated 3rd June 2009 was issued calling upon the owner to demolish the building. The impugned notice dated 18th April 2018 is a consequential notice issued under section 489 (1) of the said Act on the basis of the notice dated 3rd June 2009. The said notice dated 3rd June 2009 is not the subject matter of challenge in this petition. The occupants of the building have

including the first petitioner were served with a notice dated 15th June 2013 again on the basis of the same notice dated 3rd June 2009 calling upon the occupants to remove themselves from the building. Even the impugned notice dated 18th April 2018 calls upon the owner to get the building vacated.

2 As far as the notice dated 15th June 2013 is concerned, the occupants of the building filed a L.C.Suit No.3614 of 2013 in the City Civil Court of Mumbai wherein there is a substantive challenge to the notice dated 15th June 2013. In fact, one of the petitioners (petitioner No.4) is a plaintiff in the said suit. Admittedly, in the said suit, there is no prohibitory order issued by the City Civil Court and the suit is stated to be still pending.

3 The learned counsel for the petitioners relies upon the order dated 6th May 2016 passed by the learned Single Judge in Notice of Motion No.2110 of 2015 taken out in the Suit No.1064 of 2015. In paragraph 14 of the said order, the learned Single Judge has observed thus:

"14 The balance of convenience is completely in favour of the Plaintiffs and the tenants who are senior citizens, and who have appeared before this Court and expressed their fear of suffering grave injury and/or loss of life considering the condition in which they are living."

4 The aforesaid observations are in respect of the same building which is the subject matter of this petition. The learned Single Judge proceeded to appoint the Court Receiver, High Court, Bombay as the Receiver to carry out the redevelopment of the property. The order of the learned Single Judge was challenged by way of Appeal (L) No.234 of 2016 by Judgment and Order dated 11th August 2017, the Division Bench of this Court dismissed the Appeal. In fact, after dismissal of the Appeal, a prayer was made by the appellant for continuation of ad-interim relief. That prayer was rejected by the Division Bench by accepting the submission that the building has become dilapidated and it will be hazardous and dangerous for the occupants, if the building is not demolished at the earliest. A Special Leave Petition preferred before the Apex Court for challenging the order of the Appeal Bench has been dismissed by the Apex Court by order dated 1st September 2017. Thus, there is a confirmation of prima facie findings recorded by the learned Single Judge. Moreover, the averments made in the petition show that the petitioners were aware of the notice dated 3rd June 2009 issued by the Municipal Corporation under section 354 of the said Act as well as subsequent notice dated 15th June 2013 issued by the Municipal Corporation on the basis of the notice dated 3rd June 2009. Though the said notice dated 15th June 2013 was challenged in the Civil Court, there is no prohibitory order passed by the Civil Court. There is no dispute that one of the petitioners is a plaintiff in the said suit.

5 The learned counsel for the petitioners submitted that the original notice issued under section 354 of the said Act on 3rd June 2009 is illegal. However, the said contention cannot be gone into in this petition under Article 226 of the Constitution of India. Firstly, because there is no challenge in this petition to the said notice of 3rd June 2009. Secondly, it is now too late in the day to challenge the said notice in this petition filed on 2nd May 2018. Moreover, the notice dated 15th June 2013 issued on the basis of the said notice dated 3rd June 2009 has been challenged before the Civil Court in which there is no ad-interim relief granted. Therefore, this is not a fit case where this Court should interfere in its extraordinary jurisdiction under Article 226 of the Constitution of India, especially in the light of the conduct of the petitioners and the aforesaid factual aspects.

6 Accordingly, writ petition is rejected. However, we make it clear that we have made no adjudication on the merits of the pending L.C.Suit No.3614 of 2013 and all contentions of the plaintiffs in the said suit are kept open.

7 At this stage, the learned counsel for the petitioners submits that the petitioners may be granted eight weeks' time to vacate their respective premises in the subject building. He further states that the petitioners are ready and willing to give undertaking as may be directed by this Court.

Considering the fact that the petitioners are senior citizens, the said request deserves to be accepted.

8 Accordingly, we direct that for a period of three months from today, the petitioners shall not be evicted by the Municipal Corporation on the basis of the notices dated 3rd June 2009, 15th June 2013 and 18th April 2018 and the building shall not be demolished subject to the condition of the petitioners filing undertakings in this Court to the following effect:

(i)The petitioners shall continue to occupy their respective premises for a period of three months from today at their own risk;

(ii) This permission will be subject to further condition that in the event the subject building or any part thereof collapses, they will be solely liable for loss/damage which may be caused to the third parties;

(iii)The petitioners shall vacate their respective premises and shall hand over the vacant possession thereof to the second respondent within a period of three months from today;

(iv)Such undertakings shall be filed by the every petitioner within a period of two weeks from the date on which this order is uploaded. If all the petitioners fail to file an undertakings within the stipulated period, the protection granted for three months shall cease to apply.

(RIYAZ.I.CHAGLA,J.)

(A.S.OKA,J.)