

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LDG.) NO. 2190 OF 2018

Prema Ramnath Shetty. ... Petitioner.
V/s.
Municipal Corporation of Greater
Mumbai and others. ... Respondents.

Mr.Ashish Kamat with Mr.Prathamesh Kamat and Mr.Maulik
Tanna for the petitioner.

Mr.R.S.Apte, Senior Advocate with Ms.Vandana Mahadik
for respondent Nos.1, 2 and 4.

Mr.S.M.Oak with Mr.Sagar Joshi for respondent No.3.

CORAM : A.S.OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 10th July 2018.

P.C.:

On earlier date, the parties were put to notice that an endeavor shall be made to decide this petition of finally considering the urgency involved.

2. The dispute concerns the building known as Uday Building more particularly described in paragraph-1 of the petition. It appears that as the said building is more than 30 years old, a notice under section 353B of the Mumbai Municipal Corporation Act, 1888 (for short "the said Act") was served to the owner of the building. In response, the owner of the building submitted a structural audit report of a Structural Consultant along with proforma-B. A copy of the structural audit report along with

proforma-B was served to the occupants/ tenants of the said building along with the letter dated 23rd February 2018. The petitioner is occupying a premises on the ground floor of the said building. The petitioner, through her advocate submitted a reply dated 12th March 2018 raising an objection to the report of the Structural Consultant. Thereafter, a notice dated 8/9th March 2018 was issued by the Mumbai Municipal Corporation under section 354 of the said Act. The said notice was subject matter of challenge in Writ Petition (Ldg.) No.1797/2018 by the petitioner. The said petition was disposed of by the order dated 7th June 2018. Paragraph-1 of the said order reads thus:

“1. Heard the learned senior counsel appearing for the Respondent Nos. 1 and 2 and the learned counsel appearing for the Respondent No.3. The learned senior counsel appearing for the Respondent Nos. 1 and 2 states that notice dated 8th / 9th March, 2018 issued under Section 354 of the Mumbai Municipal Corporation Act, 1888 will be withdrawn and that the reply filed by the Petitioner dated 12th March, 2018 to the notice dated 23rd February, 2018 will be considered. After considering reply and considering structural audit report, the concerned authority of the Respondent No.1 Corporation will decide, whether the subject building falls under 'C1' category or any other category. He further states that if a decision is taken to issue a notice under Section 354 of the said Act of 1888, the notice under the said provision shall be served to the Petitioner at the address mentioned in the Petition. He states that an action on the basis of such notice will not be initiated for a period of two weeks from the date on which the notice is served to the Petitioner. We accept the aforesaid statements made on instruction by the learned senior counsel for the Respondents.”

Thereafter, within 48 hours from the said order of this Court, on 9th June 2018, a fresh notice under section 354 of the said Act was issued which is the subject matter of challenge in this petition.

3. The petitioner is relying upon the structural audit report, a copy of which is annexed to the petition. The structural audit report is by M/s.Fakri A. Hasamwala and Associates. The submission of the petitioner is that firstly the binding guidelines have not been followed by the Municipal Corporation before issuing the impugned notice. The second submission is that the report of the expert submitted by the petitioner records an opinion that ground floor premises need not be demolished provided the premises are repaired. The opinion is that the ground floor premises will have to be temporarily vacated to facilitate repairs. The recommendation is to demolish the upper floors. Whereas the opinion expressed in the structural audit report submitted by the third respondent is conflicting which records that even the ground floor cannot be saved. The third contention is that apart from the fact that the action of the Municipal Authority is very hasty as noted in the order dated 28th June 2018, the guidelines issued by the Mumbai Municipal Corporation, a copy of which is annexed at exhibit-N have not been complied with.

4. The learned counsel appearing for the third respondent submitted that in fact, the opinion of the Structural Consultant appointed by the petitioner is no different from the opinion of the Structural Consultant appointed by the third respondent. The submission is that even the opinion of the Structural Consultant appointed by the third

respondent shows that the building needs to be demolished. His submission is that out of 24 occupants of the building, 22 occupants have vacated and the petitioner is running a restaurant and bar which is frequented by large number of persons. The petitioner is, therefore, exposing his customers to a risk. He, therefore, submitted that no interference is called for. The learned counsel appearing for the Municipal Corporation submitted that the Municipal Corporation has acted as per the guidelines and there is no reason to interfere.

5. We have given careful consideration to the submissions. The manner in which the impugned order/ notice is issued is already elaborated in the order dated 28th June 2018. Undue haste has been shown. At this stage, it is necessary to make a reference to the judgment and order dated 28th February 2018 passed by this Court in Writ Petition No.1080/2015 filed by the said Municipal Corporation. The policy guidelines framed by the Municipal Corporation dealing with C-1 category private and municipal buildings were placed on record of the said writ petition. Clauses-(i) and (ii) of paragraph-28 of the said judgment and order dated 28th February 2018 read thus:

“28 Our conclusions and the final directions are as under :

(i) We accept the statement made in the affidavit of Shri Vishvash Venkatrao Shankarwar, Assistant Commissioner (Removal of Encroachment) of the Mumbai Municipal Corporation in paragraphs 1 and 2 thereof. We make it clear that the policy guidelines dealing with 'C1' category of private and Municipal buildings stand modified to the extent provided in note dated 22nd February 2018 prepared

by the Chairman of TAC which is approved on 23rd February 2018 by the Municipal Commissioner;

(ii) Needless to add that the Municipal Corporation will have to act in terms of its own policy guidelines while exercising power under Section 354 of the said Act of 1888 in respect of the buildings falling in category 'C1' which are either private or owned by the Municipal Corporation;”

A copy of the guidelines referred in the said judgment and order is annexed at exhibit-N to the petition. In this case, a notice under section 353B of the said Act was served upon the third respondent pursuant to which he filed a report of structural audit along with proforma-B. Clauses-1.02 to 1.05 of the said guidelines are material for our consideration which read thus:

“(1) Private Buildings:

1.01)

1.02) If the owner/ occupier fails to submit the structural audit report as per the notice u/s 353B in the prescribed Proforma-B (Annexure-2) within 30 days from the date of service of notice, the prosecution u/s 471/472 (as applicable) under MMC Act 1888 as amended up to date shall be filed/ launched against the offenders. The building will be inspected by Ward Executive Engineer & depending upon the visual inspection/ condition of the building will be categorized.

1.03) On receipt of Structural audit report, the findings (Category) of the same shall be communicated to tenants/ occupants by displaying it on the premise visible to all stating that occupants shall take care to safeguard the property by propping the building wherever necessary as suggested by Registered Structural Engineer.

- 1.04) If the tenant/ occupants object to the findings of the audit report they shall be asked to appoint their own registered structural engineer & submit the structural audit report in Proforma-B within 30 days. However, this period can be extended by 15 days on receipt of request from tenant/ occupier/ owner/ their structural Engineer. Otherwise process the same as per 1.07.
- 1.05) If the owners and/or the occupants submit conflicting structural audit report on the status of the building, the matter shall be referred to the concerned Technical Advisory Committee (T.A.C.) (Annexure-3) and decision of T.A.C. will be final and binding on all the parties concerned. The Technical Advisory Committee shall give hearing to concerned structural consultants during the meeting. AS far as possible meetings of Technical Advisory Committee (T.A.C.) shall not be adjourned. For genuine reasons the meeting may be adjourned but in no case more than two adjournments shall be granted.”

(Underlines supplied)

The Municipal Corporation complied with guideline No.1.03 by forwarding a report of structural audit along with proforma-B submitted by the third respondent to the petitioner. Though the petitioner objected to the said structural audit report, as required by clause-1.04, the Municipal Corporation did not call upon the petitioner to appoint her own registered structural engineer and submit a structural audit report along with proforma-B within thirty days. Clause-1.03 provides that if there are conflicting views expressed in the structural audit reports submitted by the owner and the occupants respectively, the matter shall be referred to the Technical Advisory Committee (TAC). In the present case, the Municipal

Corporation did not abide by clause-1.04 by calling upon the petitioner to submit a structural audit report within thirty days. As per the aforesaid judgment and order dated 28th February 2018, the Municipal Corporation was under an obligation to follow the guidelines. On 11th June 2018, the Structural Consultant appointed by the petitioner has submitted structural audit report. The said report records that if repairs are carried out to the ground floor, the same can be saved while upper floors are required to be demolished. The report submitted by the Structural Consultant appointed by the third respondent contains an opinion that entire building falls in category C-1 which is required to be pulled down.

6. In any case, the Municipal Corporation was under obligation to call upon the petitioner to submit structural audit report as provided in clause-1.04 of the guidelines. Apart from the findings recorded in the order dated 28th June 2018 which we have reiterated above, the Municipal Corporation has not followed its own guidelines. Therefore, the Municipal Corporation will have to follow the guidelines from clause-1.04 onwards. Considering the case made out by the respondents, by this order, we propose to grant time of thirty days to the petitioner in terms of clause-1.04 of the guidelines.

7. Even assuming that 22 out of 24 occupants have vacated the building, that is no ground not to interfere as this Court is examining the legality of the decision making process adopted by the Municipal Corporation and this Court has not recorded any finding on the present status of the structure of the subject building.

8. The petitioner has already given an undertaking in terms of the order dated 28th June 2018. Considering the fact that the petitioner is running a restaurant and bar, the information about the undertaking must be given to the customers entering the premises of the petitioner.

9. Accordingly, we dispose of the petition by passing the following order:

- (i) Only on the ground that the Municipal Corporation has not followed guidelines, we set aside the notices/ orders dated 9th June 2018 and 14th June 2018;
- (ii) We direct that it will be open for the petitioner to submit a structural audit report along with proforma-B to the Municipal Corporation within a period of thirty days from today. As this order is dictated in the open Court, even if a copy of the order is not available, the Municipal Corporation shall accept and act upon such structural audit report, if submitted by the petitioner within thirty days from today;
- (iii) After following the guidelines, the Municipal Corporation shall take appropriate decision on the structural status of the subject building and about action to be taken. Such decision shall be taken as expeditiously as possible and preferably within a period of two months from today. Needless to add that if a decision is taken to issue notice

under section 354 of the said Act, the same shall be issued. If the decision is taken not to issue such notice, communication to that effect shall be issued to the parties to the petition;

- (iv) We direct that the undertaking given by the petitioner in terms of the order dated 28th June 2018 will continue to bind the petitioner for a period of three months from today which will be naturally subject to the decision taken by the Municipal Corporation;
- (v) We direct the petitioner to display at the entry point of the restaurant and bar run by her the information about the contents of the undertaking filed pursuant to the order of the Court. The said information shall also be displayed in Marathi language. Such information shall be displayed for a period of three months from today subject to the decision which may be taken by the Municipal Corporation. If the petitioner does not comply with this direction, the Municipal Corporation is free to move this Court for appropriate orders;
- (vi) We make it clear that we have made no adjudication on the present structural status of the building and all issues in that behalf are kept open;
- (vii) Writ petition is disposed of on the above terms.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)