

Sharayu Khot.

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

WRIT PETITION NO. 1972 OF 2017

Mr. Amex Developers Pvt. Ltd.

...Petitioner

Versus

State of Maharashtra & Ors.

...Respondents

Mr. A.M. Saraogi, for the Petitioner.

Mr. Sukanta Karmakar, AGP for the Respondent No. 1.

Ms. K.H. Mastakar, for the Respondent – BMC.

Mr. V.P. Sawant, for the Respondent No. 3.

Mr. Prateek Pai a/w Ms. Aparajita Sen, i/b Mr. Rakesh Agrawal
for the Respondents No. 4 to 6.

Mr. Neel Gala, for the Respondents No. 8 to 11 and 12 to 15.

**CORAM : ABHAY S. OKA AND
RIYAZ I. CHAGLA, JJ.**

DATE : 25 July 2018

ORDER :

1. Heard the learned Counsel appearing for the

1/4
July 25, 2018

Petitioner and the learned Counsel representing the various Respondents. The prayer in this Petition under Article 226 of the Constitution of India reads thus:-

“that this Hon'ble Court be pleased to issue appropriate writ, order and direction directing the Respondents No. 2 and 3 to either demolish the building known as Ratanbai bearing No. 13/21, situated at J.B. Marg Chinch Bunder Cross Road, Mumbai 400 009 or take appropriate steps for the purpose of repairs of the said building in order to avoid any collapse of the said building while the Petitioners shall start their work of construction in respect of their own building known as Rambia House situated at 4, Keshavji Naik Road, Chinch Bunder Mumbai-400 009 on such terms as this Hon'ble Court may deem fit and proper.”

2. In substance, the case of the Petitioner is that it is not concerned in any manner with the building of the 4th to 6th Respondents and if the Petitioner start construction work on its own property, due to digging which required to be done to undertake construction, the building owned by the 4th to 6th

Respondents may collapse. That is why a writ of mandamus in terms of prayer clause (a) is prayed for enjoining the Municipal Corporation either to demolish the building of 4th to 6th Respondents or to take steps for carrying out the repairs to the same.

3. There is a Reply filed by the 4th Respondent. In the Reply, reliance is placed on a structural audit report dated 20th November 2017, which records an opinion that his building is in safe, sound and stable condition, but it requires repairs.

4. Reliance is placed by the Petitioner on the notice issued under Section 353 B of the Mumbai Municipal Corporation Act, 1888 calling upon the 4th to 6th Respondents to produce the structural audit report. The learned Counsel appearing for the Petitioner has tendered across the bar the letter dated 17th September 2017 addressed to the owner of the building adjacent of the building of the Petitioner addressed by the Maharashtra Housing & Area Development Authority

informing the occupants that the building is in a dangerous condition.

5. The question is what is the legal right of the Petitioner to compel the 2nd and 3rd Respondents to take action against the building which is not owned by the Petitioner only to facilitate the construction activity of the Petitioner. It is therefore, for the Petitioner to make a representation to the 2nd and 3rd Respondents or any of them. If such representation is made, the concerned authority shall decide the same within a period of six weeks from the date on which the same is submitted by the Petitioner.

6. We make it clear that we had made no adjudication on the structural status of the building of the 4th to 6th Respondents as well as the rights and liabilities of the parties.

7. The Petition is disposed of with the above directions.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]