

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

WRIT PETITION (LDG.) NO. 2346 OF 2018

Vrajesh Mulshankar Dave. ... Petitioner.
V/s.
Municipal Corporation of Greater Mumbai
and others. ... Respondents.

Mr.M.M.Vashi, Senior Advocate with Ms.Aparna Deokar i/b.
M.P.Vashi Associate for the petitioner.

Ms.Pallavi Thakar for the respondent- MMC.

Mr.Shilpan Gaonkar with Mr.A.R.Sawant and Ms.Shravani Dalvili
i/b. S.K.Legal Associates for respondent No.3.

Sanjay
Kashinath
Nanoskar
Digitally signed
by Sanjay
Kashinath
Nanoskar
Date:
2018.08.09
19:01:58 +0530

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

DATE : 19th July 2018.

P.C.:

The submissions were heard yesterday. We issue rule. The learned counsel appearing for the first and second respondents as well as third respondent waive service. Considering the order which we propose to pass, notice to the other respondents is dispensed with.

2. The petitioner is occupying a premises in a building more particularly described in paragraph-3 of the petition. The challenge in the petition is to the notice dated 27th June 2017 issued under section 354 of the Mumbai Municipal Corporation Act, 1888 (for short “the said Act”).

The notice proceeds on the footing that the building in question is in dangerous and dilapidated condition and is required to be pulled down. It is pointed out that water supply to the premises of the petitioner has already been disconnected.

3. The submission of the learned senior counsel appearing for the petitioner is that the impugned notice has been issued without following the directions issued by this Court in judgment and order dated 23rd June 2014 in Writ Petition (Ldg.) No.1135/2014 (*Mumbai Municipal Corporation of Greater Mumbai v. State of Maharashtra and others*). His submission is that a copy of the report of structural audit submitted by the third respondent- owner pursuant to the notice under section 353B of the said Act was not provided to the petitioner and, therefore, the petitioner could not obtain opinion of his structural consultant.

4. The learned counsel appearing for the third respondent submitted that the subject building is in a dangerous and dilapidated condition and number of occupants have vacated the building. He submitted that the petitioner was aware of the structural audit report submitted by the third respondent and, in fact, the correspondence made by the petitioner shows that the petitioner had taken opinion of the structural consultant. He, therefore, submits that no interference is called for considering the present structural status of the building.

5. The learned counsel appearing for the first and second respondents supported the impugned notice by producing files. He

submitted that the Municipal Corporation has followed the procedure and, therefore, no interference is called for.

6. We have carefully considered the submissions. On 28th April 2017, a notice under section 353B of the said Act was served to the owner of the building calling upon him to submit a structural stability certificate on the ground that the building was 30 years old. Accordingly, the third respondent submitted a report of the structural engineer along with proforma-B. The opinion formed by the structural consultant appointed by the third respondent is that the building falls in category-C-1 which requires immediate demolition.

7. Our attention is invited to the aforesaid judgment and order dated 23rd June 2014 and, in particular the directions contained in paragraph- 9 thereof. Clause (b) of paragraph-9 requires the Municipal Corporation to conduct its own independent inspection and assessment with the help of the engineers of its department and carry out survey of the building before classifying the building as falling in category-C-1. We find from the file produced by the Municipal Corporation that this exercise was not undertaken by the Municipal Corporation. Clause (c) of paragraph-9 deals with a situation where the owner and occupants submit conflicting reports of the experts on the status of the building. In such eventuality, the Municipal Corporation is required to refer the issue to the Technical Advisory Committee (TAC). Subsequently, the Municipal Corporation has adopted guidelines which have been approved by the Municipal Commissioner on 25th May 2018. As per the guidelines, when

the owner submits a report of structural audit in accordance with section 353B of the said Act, the same is required to be communicated to the tenants/ occupants and an opportunity is required to be given to the tenants/ occupants to appoint their own structural consultant and submit structural audit report. It is true that the said guidelines have been issued in May 2018. However, the aforesaid judgment and order dated 23rd June 2014 contemplates a possibility where occupants file a structural audit report containing conflicting opinion. Unless an opportunity is given to the tenants/ occupants to deal with the structural audit report submitted by the owner, there will not be any opportunity for the tenants/ occupants to appoint a structural consultant for making structural assessment/audit.

8. Apart from this, we find from the file that there is no independent application of mind in any manner by any Municipal Officer to the structural status of the building and only by relying upon the structural audit report submitted by the third respondent that the impugned notice has been issued. Therefore, the building cannot be allowed to be demolished on the basis of the impugned notice. The learned senior counsel appearing for the petitioner submitted that the petitioner will appoint his own structural consultant and submit a report to the Municipal Corporation.

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

- (i) It will be open for the petitioner to submit a structural audit report of the building in question to the second respondent within a period of one month from today. If such report is not submitted within the period of one month from today, the first and second respondents are free to take action on the basis of the impugned notice dated 27th June 2017;
- (ii) If such a report is submitted by the petitioner and if the opinion expressed therein is conflicting with the view expressed by Yogesh P. Patel, the structural engineer appointed by the third respondent, the first respondent shall immediately refer the said case to TAC which shall endeavour to submit its report as early as possible and, in any event, within a period of six weeks from the date a reference is made to TAC;
- (iii) The report of TAC shall be considered by the appropriate authority of the first respondent. If the appropriate authority comes to the conclusion that the building will have to be classified as falling in category “C-1”, a fresh notice shall be issued under section 354 of the said Act. The fresh notice shall provide for fifteen days time to the petitioner and other occupants to remove themselves from their respective premises;

- (iv) If, according to the first and second respondents, the opinion expressed by the structural consultant appointed by the petitioner is in no way in conflict with the opinion expressed by Shri Yogesh P. Patel, structural consultant appointed by the third respondent, it will be open for the first and second respondents to implement the impugned notice after giving fifteen days advance notice to the petitioner;
- (v) We make it clear that the petitioner will continue to occupy the premises in his possession at his own risk;
- (vi) The water supply to the petitioner's premises shall be immediately restored. Needless to add that in view of the above directions, on the basis of the impugned notice, the fourth respondent cannot disconnect electric supply to the petitioner's premises;
- (vii) We also make it clear that we have made no adjudication on the present structural status of the subject building;
- (viii) Rule is made absolute in the above terms;

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)