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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

NOTICE OF MOTION (L) NO.547 OF 2018
IN
WRIT PETITION NO.963 OF 2018

Rajesh Hiranman Waghmare and Ors. Applicants
Vs.
Municipal Corporation of Greater Mumbai and Ors. ... Respondents

Mr. Sanjiv Sawant, Mr. Rui Rodrigues, Mr. Vignesh Iyer I/b. Mr. Mihir Joshi for the Applicants.

Mr. Sagar Patil for the Respondent Nos.1 to 3 - BMC.

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

DATE : 27th SEPTEMBER 2018.

P.C. :

1 Heard the learned counsel appearing for the applicants and the learned counsel appearing for the respondent nos.1 to 3. The prayer in this notice of motion is for recall/ modification of the judgment and order dated 28th March 2018 passed by this Court in Writ Petition No.963 of 2018. This Notice of Motion was substantially heard on 17th September 2018. In the Writ Petition which is disposed of by the order dated 28th March 2018, the challenge was to the notice dated 8th September 2017 as well as notice dated 22nd December 2017 issued by the Mumbai Municipal Corporation to the applicants. The notices proceed on the footing that the buildings subject matter of the writ petition fall in category 'C1' which is a category of buildings which are not fit for human habitation and which are required to be pulled down. By the first notice dated 8th September 2017, a temporary accommodation was offered to the applicants and by the second notice, they were informed that the electricity and water

supply to the buildings will be disconnected on 29th December 2017. Undertakings were filed by the petitioners and the Respondent Nos.5 to 11 and 13 to 31 in the writ petition on identical terms. Paragraph Nos.3 to 7 of the judgment and order dated 28th March 2018 read thus :-

“3. The petitioners and the respondent Nos.5 to 11 and 13 to 31 have filed similar undertakings on oath before this Court. We must note here that the learned counsel appearing for the respondent No.25A stated that the undertaking of the said respondent is ready and will be filed during the course of the day. In the undertakings filed by all the aforesaid parties, it is stated thus:

“1. I say that I am filing present Undertaking pursuant to the order dated 23/02/2018 passed by this Honourable High Court in present Writ Petition. I say that present Undertaking may not be treated as my Affidavit in Reply to the writ Petition and I crave leave to file separate Affidavit in Reply.

2. I say that tenancy rights in respect of Flat No.A5, First Floor, B.I.T. 2 Rooms Tenements, C.S.No.327/10 and 544 (part), Dadar Matunga Division, Scheme No.6, Road No.4, Laxminarayan Lane, F/North Ward, Matunga, Mumbai 400 019 are standing in my name and I am the authorized tenant in respect of the aforesaid flat in the records of Brihan Mumbai Municipal Corporation and the aforesaid Flat is in my possession and is being occupied by me and my family.

3. I hereby offer my unconditional undertaking to this Honourable court that I will vacate Flat No.A5, First Floor, B.I.T. 2 Rooms Tenements , C.S.No.327/10 and 544 (part), Dadar Matunga Division, Scheme No.6, Road No.4, Laxminarayan Lane, F/North Ward, Matunga, Mumbai 400 019 on or before 31st May 2018. I further undertake to this Honourable Court that I will continue to occupy the aforesaid Flat at my own risk and in the event of collapse of the building or any part thereof, I will be solely responsible for any loss or damage which may be caused to any third party.”

4. As stated earlier, there are similar undertakings given by the aforesaid parties. The undertakings given by the

parties are to vacate the premises in their possession on or before 31st May 2018.

5. The learned senior counsel appearing for the first to third respondents states that the first respondent will take appropriate decision on the application for redevelopment submitted under regulation 33(7) of the Development Control Regulations, 1991 and the same will be communicated to the petitioners by 10th April 2018. We accept the said statement.
6. In view of undertakings, the challenge to both the notices will not survive as all concerned have undertaken to vacate the premises in their respective possession on or before 31st May 2018.
7. Hence, we dispose of this petition by passing the following order:
 - (i) We direct the respondent Nos.1 to 3 not to take any steps against the petitioners and the respondent Nos.4 to 31, on the basis of second impugned notice at Exhibit T which is dated 22nd December 2017 till 31st May 2018. Needless to clarify that not only the action on the basis of the said notice shall not be taken but even the electricity and water supply to the respective premises of the said parties shall not be disconnected;
 - (ii) In the event the respondent Nos.4, 12 and 25A fail to file similar undertakings in this Court within a period of three weeks from today, the protection granted as above shall stand vacated only as far as these three respondents are concerned and the Municipal Corporation shall be free to take action on the basis of the impugned notices against the said respondents;
 - (iii) In the event of failure of the parties who have given undertakings, to vacate their respective premises and hand over the vacant possession thereof to the first respondent Municipal Corporation on or before 1st June 2018, it will be open for the first respondent to take forcible possession of the premises in possession of the respective parties. For that purpose, the concerned local police station shall grant adequate police force to the Municipal Corporation;
 - (iv) We accept the statement made by the respondent Nos.1 to 3 that the proposal for redevelopment

submitted by the petitioners will be decided and the decision taken thereon will be communicated to the petitioners and all concerned parties on or before 10th April 2018;

- (v) We also make it clear that if the parties who have given undertakings as aforesaid wish to avail the alternative accommodation offered by the first respondent, they are free to do so on or before 31st May 2018. If they fail to avail benefit of allotment of alternate accommodation on or before the said date, the first respondent will not be bound to provide the alternate accommodation to the said parties;
- (vi) The petition is disposed of on the above terms.”
(underline supplied)

2 By order dated 24th July 2018, the time to vacate has been extended till 31st August 2018 subject to the same parties giving fresh undertakings which have been filed on record. The present Notice of Motion is based on structural audit report dated 27th June 2018 submitted by the Structural Engineering Department of Veermata Jijabai Technological Institute (for short “VJTI”). In the said report, VJTI opined that the subject buildings are in a stable condition and are safe for human habitation.

3 In the affidavit in support it is stated that the experts of VJTI visited the building on 22nd May 2018. The submission in support of the Notice of Motion is that as the report of VJTI runs contrary to the finding of the Municipal Corporation that the buildings fall in the category 'C1', the Municipal Corporation may be directed to refer the case to the Technical Advisory Committee (TAC). Obviously, the applicants want themselves to be relieved from the undertakings given to this Court to vacate the residential premises in possession of the parties to the petition by 31st August 2018. The learned counsel appearing for the applicants on

instructions states that the petitioners and the respondent Nos.5 to 11 and 13 to 31 in writ petition are willing to file fresh undertakings on oath stating that in the event the TAC comes to the conclusion that the buildings fall in category 'C1', within a period of three weeks from the date of receipt of the report, they will unconditionally vacate the respective premises in their possession and that they will not seek extension of time. We accept the statement. The applicants have tendered two Banker's Cheques in the sum of Rs.10 Lakhs and 5 Lakhs respectively towards the costs of this Notice of Motion payable to the Municipal Corporation.

4 The learned counsel appearing for the Municipal Corporation opposed the Notice of Motion by pointing out that after giving undertakings on two occasions, the petitioners and the concerned respondents want to commit a breach of the said undertaking. His submission is that it is too late in the day now to submit a report of an expert.

5 The petitioners and the concerned respondents in the writ petition are occupying residential tenements in the buildings owned by the Municipal Corporation for several decades. We have perused the report of VJTI. We find that VJTI conducted various tests and after conducting various tests, it came to a conclusion that the buildings are in stable condition and are safe for human habitation. We are not accepting the said report as correct. However, the report of VJTI which is having some reputation in the field cannot be altogether brushed aside. TAC established by the Municipal Corporation which deals with a situation where there are conflicting views expressed by the structural consultants about the structural status of the buildings. The question is of residence of

persons who are staying in the respective premises for last several decades. The Municipal Corporation is being compensated by paying costs of Rs.15 Lakhs. Moreover, the parties have agreed give to the undertakings as stated above. We, therefore, deem it proper to issue a direction to TAC to consider the report of VJTI and to give an opinion on the structural status of the buildings in question.

6 The Banker's Cheques in the sum of Rs.10 Lakhs and 5 Lakhs are handed over in the Court to the learned counsel representing the Municipal Corporation who has accepted the same without prejudice to the rights and contentions of the Municipal Corporation towards the costs of this Notice of Motion.

7 We modify the orders dated 28th March 2018 and 24th July 2018 by directing the Mumbai Municipal Corporation to refer the case of the subject buildings to TAC. A copy of the report of VJTI relied upon in this Notice of Motion be provided to TAC which shall conduct necessary tests and submit its opinion about the present structural status of the subject buildings as expeditiously as possible and in any event within a maximum period of eight weeks from the date on which undertakings in terms of this order are filed by the parties to the writ petition.

8 We are granting the aforesaid relief subject to condition of all the writ petitioners and the respondent nos.5 to 11 and 13 to 31 filing undertakings on oath in this Court stating that :-

- (I) They will continue to occupy the respective premises at their own risk and that in the event of fall of the buildings or any portion thereof, they will be solely responsible for the loss or damage which may be caused

to the third parties;

- (II) In the event TAC of the Municipal Corporation comes to the conclusion that the subject buildings fall in the category 'C1', within a period of three weeks from the date on which the copies of the report are supplied to the writ petitioners and others either by way of personal service or by affixing the same on the outer door of their respective premises, the parties who have given undertakings as aforesaid shall unconditionally vacate the respective premises and hand over the vacant possession thereof to the Municipal Corporation;
- (III) Under no circumstances, they will seek time to vacate the premises;

9 On failure of all the petitioners and the respondent nos.5 to 11 and 13 to 31 to file undertakings on above terms within a period of three weeks from today, the direction issued to refer the case to TAC shall not operate and it will be open for the Municipal Corporation to take forcible possession of the premises in possession of the parties. In such event, the officer in-charge of the concerned local Police Station shall provide necessary police protection and help to the Municipal Officers.

10 We make it clear that we have made no adjudication on the present structural status of the subject buildings and we have also not made any adjudication on the correctness or otherwise of the report of the VJTI or other documents relied upon by the applicants and all issues are kept open to be decided by the TAC.

11 Notice of Motion is disposed of on above terms.

12 We also make it clear that the applicants and none of
the parties to the writ petition will be entitled to seek extension of
time on the ground that alternate accommodation is being offered to
them at Mahul near Chembur.

13 We hope and trust that the Municipal Corporation will
use the cost amount for providing infrastructure to its Municipal
Schools which are lacking infrastructure.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)