

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

WRIT PETITION NO. 191 OF 2017

Rufina D'Souza and others. ... Petitioners.

V/s.

Municipal Corporation of Greater Mumbai
and others. ... Respondents.

Ms.Liz Thachet i/b. Mr.Jayesh G. Gawde for the petitioners.
Ms.Pallavi Thakar for respondent Nos.1 and 2.
Mr.Pradeep Thorat with Mr.Bipin Joshi for respondent Nos.3 to 5.
(Mr.Sadiq Khan, AE (B & F), N-Ward is present.)

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

DATE : 7th August 2018.

P.C.:

By an order of the Division Bench of this Court dated 13th January 2017, this petition was dismissed on the ground that same involved disputed questions of fact. In Civil Appeal No.3798/2017 filed by the present petitioners, by the judgment and order dated 9th March 2017, the order of this Court was set aside and writ petition was remanded to this Court for *de novo* consideration. A direction was issued by the Apex Court to this Court to take up the petition expeditiously. Accordingly, we have taken up the petition for final hearing.

2. The first substantive prayer in this petition under Article 226 of the Constitution of India is for quashing notice dated 18th November

2014 issued by the Brihanmumbai Municipal Corporation (for short “Municipal Corporation”) by which the subject building being J.D. House was declared as falling in C-1 category. This notice seems to have been issued in exercise of powers under section 354 of the Mumbai Municipal Corporation Act, 1888 (for short “the said Act”). It appears that thereafter as there were conflicting opinions in the two structural audit reports filed with the Municipal Corporation, the case was referred to the Technical Advisory Committee (TAC). TAC conducted a meeting on 10th December 2015 and concluded that the building needs immediate demolition. It appears that on 1st February 2016, an order was made by the Municipal Commissioner directing that necessary action shall be taken as per TAC report. Therefore, the notice dated 9th August 2016 was issued calling upon the petitioner to vacate the premises in their possession in the said building and for disconnecting electricity and water supply. Prayers (b) to (c) contain a challenge to the said notice dated 9th August 2016. Prayers (c-1) and (c-2) seek compliance by the third to fifth respondents with the conditions in IOD issued by the first respondent-Municipal Corporation.

3. After a declaration was issued by the second respondent on 18th November 2014 that the subject building falls in C-1 category which requires immediate demolition, the first respondent itself referred the case to TAC and, therefore, no action could have been taken by the Municipal Corporation on the basis of the earlier notice. TAC in its meeting held on 10th December 2015 opined that the building needs to be pulled down immediately. In fact, if the Municipal Commissioner was satisfied with

the opinion of TAC, a fresh notice under section 354 ought to have been issued. However, that was not done and water and electricity connection to the building were disconnected. After perusal of the report of TAC, we find that TAC itself has not conducted any test. The TAC has referred to the conflicting structural audit reports in respect of the structural status of the building. The case of the petitioners made out on the basis of the report of their structural consultant was that the building was not in a dilapidated condition. As stated earlier, not only that TAC did not conduct any test but it merely observed that post-graduate staff appointed by the first respondent has made visual inspection and found the structure to be in dilapidated condition. The qualifications of the members of the staff have not been disclosed. It is not the case of the Municipal Corporation that they were structural consultants or structural engineers. Faced with this difficult, the learned counsel appearing for the first respondent, on instruction from Mr.Sadik Khan, AE (B & F), N-Ward, states that the Municipal Corporation will again refer the case to TAC. We accept the said statement. In view of the said statement, unless a fresh report of TAC is submitted, action under section 354 of the said Act cannot be taken.

4. As regards prayers (c-1) and (c-2), admittedly, a commencement certificate under section 45 of the Maharashtra Regional and Town Planning Act, 1966 has not been issued by the first respondent-Municipal Corporation. Whether third to fifth respondents have complied with conditions in IOD is a question which will have to be gone into by the Municipal Corporation before issuing a commencement certificate.

Therefore, at this stage, this issue need not be gone into as the first respondent is bound to ensure that all the conditions in IOD are complied with before issuing commencement certificate.

5. As the matter is being referred to TAC, it will be necessary to impose a condition of filing usual undertaking on the petitioners.

6. If the electricity and water supply to the premises of the petitioners in the subject building have already been disconnected, the same will have to be restored for the simple reason that after the TAC report of December 2015, there is no fresh notice issued under section 354 of the said Act and, therefore, action of disconnection of electricity and water supply could not have been lawfully taken without any further notice to the petitioners under section 354. Hence we pass the following order:

- (i) We accept the statement made by the learned counsel appearing for the first respondent, on instruction, that the case will be again referred to TAC. In view of this statement, the impugned notices cannot be acted upon and, hence, it is not necessary to grant prayers (a) to (c);
- (ii) We direct the TAC to complete the exercise and submit a fresh report within a maximum period of six weeks from today. TAC will have to comply with the guidelines issued by the Municipal Commissioner from time to time;

- (iii) After the report is submitted by TAC, appropriate Officer of the first respondent shall take appropriate decision on the basis of the report of TAC. If the appropriate Officer decides to issue a notice under section 354 of the said Act for immediate demolition of the subject building, we direct that action of demolition shall not be taken for a period of fifteen days from the date of service of the notice on the petitioners;
- (iv) We direct the petitioners to file undertakings on oath stating therein that they will continue to occupy their respective premises at their own risk and in the event of fall of the building or any part thereof, they will be solely responsible for the loss or damage which will be caused to any third party. The undertakings will remain in force till the expiry of three weeks from the date on which the appropriate decision is taken by the appropriate officer on the fresh report of TAC;
- (v) Undertakings as aforesaid shall be filed within a period of three weeks from today. If such undertakings are not filed within the period of three weeks from today, it will be open for the first respondent to take an action of demolition in respect of the subject building;

- (vi) On filing of undertakings as aforesaid and on service of copies thereof on the first respondent, the electricity and water supply to the subject building shall be restored. The restoration of the electricity and water supply will not create any equity in favour of the petitioners;
- (vii) We make it clear that we have made no adjudication on the present structural status of the subject building and all issues in that behalf are left open to TAC;
- (viii) Needless to add that the petitioners are not entitled to carry out any repairs to the building without express permission of the Municipal Corporation;
- (ix) Writ petition is disposed of on the above terms.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)