

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

WRIT PETITION (LDG.) NO. 3251 OF 2017

Goldie Sud. ... Petitioner.
V/s.
The Municipal Corporation of Greater Mumbai
(MCGM) and others. ... Respondents.

Mr.Atul Damle, Senior Advocate with M.N.Ramalingaiah
for the petitioner.
Mr.U.S.Upadhyay, AGP for respondent No.1- State
Ms.Pallavi Thakar the respondent- MMC.
Mr.Ravi Gadagkar i/b. Ms.Usha Gadagkar for respondent No.9.

CORAM : A.S.OKA AND P.N.DESHMUKH, JJ.

DATE : 29th January 2018

P.C.:

The parties were put to notice earlier that this petition will be disposed of at the stage of admission.

2. The Mumbai Municipal Corporation issued a notice dated 24th September 2015 under section 354 of the Mumbai Municipal Corporation Act, 1888 (for short “the said Act”) recording that the subject building is in a dangerous and dilapidated condition and the same shall be pulled down.

3. As per the directions of this Court under the judgment and order dated 13th July 2017 in Writ Petition No.1916/2016, the Municipal Corporation was directed to refer the case to the Technical Advisory Committee (TAC). Clauses (II) and (III) of the operative part of the said order reads thus:

“(II) We direct the Municipal Corporation to refer the case to TAC. The case shall be referred to TAC even before a copy of this Judgment and order is uploaded on the website. The TAC shall scrupulously follow the directions issued by this Court in the case of Mumbai Municipal Corporation (supra) and in particular clause (d) of paragraph 9 of the said Judgment dated 23rd June 2014. The TAC shall submit a report to the Mumbai Municipal Corporation within a period of two months from today. It is for the TAC to decide whether it needs presence or the assistance of the occupants/owner of the building;

(III) After receiving the report of the TAC, the concerned competent authority of the Mumbai Municipal Corporation will decide whether the impugned notice under section 354 of the said Act can be implemented. If the Competent Authority decides to implement the notice, intimation in writing to that effect shall be served along with a copy of the TAC report not only to the parties to this petition but also to the applicant in Chamber Summons and all other occupants in the building;”

4. Thereafter, the matter was referred to TAC which submitted a report dated 6th October 2017. It appears that the Municipal Corporation appointed M/s.Shashank Mehendale & Associates, Structural Consultants to carry out tests and submit its opinion. The relevant part of the report reads thus:

“Shri. Jayesh Malanker, representing M/s. Shashank Mehendale and Associates, apprised to all the TAC members that the Ultrasonic Pulse Velocity test and Half cell Potential test results are not good, however the quality of concrete is good as the values of Rebound Hammer test and Core test results are good. The cracks of structural members are merely covered with POP sheets and POP punning, hiding the defects and distress of the structural members. Some of the structural member's viz. Chajjas, balconies, room slab and parapet wall are deteriorated badly and needs to be dismantled carefully. Some of the beams show minor cracks. Some of the beams are deteriorated badly and needs repair with Micro Concrete Jacketing. Some of the Columns need major structural repairs such as concrete jacketing. The repairs are to be carried out after vacating the building. He further added that, the structural repair cost will be approximately 602.39/- per sq. ft. If repairs are carried out the life of the structure will be enhanced by 5 years.

The structural audit report, proforma 'B' and facts put up by all the structural consultants, opinions/ reports of ward staff and representatives of TAC were discussed during meeting in detail. Hence, TAC members opined that the building under reference known as “Meleagrina” is repairable considering all aspects, site conditions and structural audit reports.

However, the repair work of entire structure should be carried out as per the repair methodology proposed by M/s. Shashank Mehendale and Associates by vacating the building as major structural repairs are suggested. The repair work of entire structure should be carried out on war footing in consultation with and under strict supervision of Registered Structural Engineering by obtaining prior permission from competent authority. A structural stability certificate should be submitted to H/West ward after completion of repair work by the concerned party/parties. Further owner/occupier will be held responsible for any mishap, if the structure is not repaired as per the above directions.

In the meantime, owner/ occupiers shall be directed to take all necessary preventive measures such as propping etc. to avoid any mishap.”

5. On the basis of the said report, notice dated 3rd November 2017 was issued which contains the following direction:

“Further the repair work of entire structure should be carried out on war footing in consultation with and under strict supervision of Registered Structural Engineer as per the methodology proposed by M/s. Shashank Mehendale and Associates by vacating building by obtaining permission from competent authority. A structural stability certificate should be submitted to this office after completion of repair work. Further owner/ occupier will be held responsible for any mishap, if the structure is not repaired as per the above directions and if this requisition be not complied with, you will render yourself liable to prosecution Under Section 475-A of the M.M.C. Act. All the necessary precautions shall be taken to safeguard the structure in order to avoid mishap if any or danger to the road users and neighborhood by providing adequate propping wherever necessary through the approved register contractor.”

6. The submission of the learned counsel appearing for the petitioner is that as far as TAC is concerned, the role was confined to decide whether the building is in such a dilapidated condition that it needs to be pulled down. TAC was concerned only with certifying the structural status of building. The submission is that TAC has exceeded its jurisdiction by virtually directing that the repair work of the entire structure should be carried out as per the methodology proposed by M/s.Shashank Mehendale & Associates by getting the building vacated.

The submission is that without application of mind further notice dated 31st January 2017 was issued by the Municipal Corporation which is completely illegal. The learned counsel appearing for the Municipal Corporation supported the impugned notice by submitting that the Municipal Corporation has a power to direct that repairs should be carried out to a building as provided in section 354 of the said Act. We have also heard the learned counsel appearing for respondent No.9. He has submitted to the orders of the Court.

7. We have already quoted the directions issued under the judgment and order dated 13th July 2017. After considering the report of TAC, the competent authority of the Municipal Corporation was directed to decide whether the impugned notice under section 354 of the said Act can be implemented. It appears that there was no application of mind by the competent authority of the Municipal Corporation and only on the basis of the conclusions in the TAC report that the notice dated 3rd November 2017 was issued.

8. It is true that under section 354 of the said Act, the Municipal Corporation has power to issue a notice requiring the owner or the occupier to repair a structure. However, before issuing such notice, an application of mind is required in the facts of each case. All that the Designated Officer of H-Ward has done is to simply accept the recommendations of M/s.Shashank Mehendale & Associates and the recommendations of TAC and issue a drastic order directing that the building should be vacated for the purpose of facilitating repairs to be

carried out. According to us, as per the directions of this Court, at the highest the Municipal Corporation could have decided to maintain the earlier notice issued under section 354 of the said Act after considering the report of TAC. However, without application of mind, notice dated 3rd November 2017 has been issued.

9. In the circumstances, the said notice will have to be set aside. The duty of TAC was to decide on present structural status of the building such as falling in category C-1 (requires immediate demolition). However, TAC cannot order repairs in terms of recommendations of a particular structural consultant. We may note here that as far as report of TAC is concerned, it is in the nature of a recommendation. Therefore, it is not necessary to set aside the said report specifically.

10. As regards challenge to the notice dated 21st June 2016 is concerned, we must note here that even if the petitioner wants to carry out repairs, he will have to seek permission of the Mumbai Municipal Corporation and he cannot commence the work of carrying out repairs without prior permission. Therefore, challenge to the said notice cannot be upheld. Hence, we dispose of this petition by passing the following order:

- (i) The notice dated 3rd November 2017 (Exh.G to the petition) is hereby quashed and set aside;
- (ii) We make it clear that as the report of TAC dated 6th October 2017 is in the form of opinion, all contentions of parties on the basis of the same are kept open which can be

agitated after any action is sought to be taken on the basis of the said report. Appropriate Authority of the Municipal Corporation is free to consider the report of TAC and take appropriate decision;

(iii) We make it clear that this order will not prevent the Municipal Corporation from exercising its powers under section 354 of the said Act of directing repairs to be carried out to the said building;

(iv) We decline to entertain challenge to the notice dated 6th October 2017 as the repairs cannot be carried out by the petitioner without seeking permission of the Municipal Corporation;

(v) As the Municipal Corporation has not taken any decision to act upon the notice dated 24th September 2015, it is obvious that as on today it cannot be said that the subject building falls in category C-1;

(vi) The petition is, accordingly, disposed of in the above terms.

(PN.DESHMUKH, J.)

(A.S.OKA, J.)