

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**903 CIVIL APPLICATION NO.7024 OF 2019
IN WP/12168/2018**

ASHOK LAXMAN VALLAKATTI AND OTHERS
VERSUS
THE COMMISSIONER AHMEDNAGAR MUNICIPAL
CORPORATION AND OTHERS

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Advocate for Applicants : Mr. Subodh P. Shah
Advocate for Respondent Nos.2 to 9 : Mr. P.R.
Katneshwarkar h/f Mr. S.R. Andhale
Advocate for Respondent No.1 : Mr. K.N. Lokhande

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**CORAM : P.R. BORA, J.
DATED : 21st JUNE, 2019.**

PER COURT:-

. The petitioners have filed the present application
with the following prayers:

"A) The Hon'ble High Court may be pleased to permit the applicants to repair the roof of the suit property and secure the loose tin sheets.

B) Alternatively, the Hon'ble High Court may be pleased to direct the Respondent Nos.2 to 9 to repair the roof of the suit property and secure the loose tin sheets.

C) Any other just and equitable relief to which the applicants may be found entitled may kindly be granted."

2. Though the respondents have not submitted any affidavit in reply, during course of the arguments the contentions raised in the application are denied and the

earlier documents and notices which are part of the record are referred to.

3. Shri S.P. Shah, the learned counsel appearing for the petitioners-applicants submitted that since beginning, it is the contention of the petitioners that the subject building is liable to be repaired and there is no structural danger to the said building. The learned counsel inviting my attention to the notices time to time issued by respondent no.1-corporation submitted that even in all the said notices, the options were given either to carry out the repairs or to pull down the dilapidate structure. The learned counsel pointed out that though both the courts below i.e. the Trial Court as well as the First Appellate Court have rejected the applications filed by the present petitioners seeking injunction, the order directing the parties to maintain status-quo was throughout operating and this Court has also continued the same.

4. The learned counsel submitted that an emergent situation has arisen because of which the petitioners-applicants are required to file this application seeking some urgent orders from this Court. The learned counsel submitted that the shops of the present applicants are on

ground floor and though the said floor is quite safe and in good condition and there is no much dispute about the said fact, the first and second floor require some repairs so as to ensure that no further damage is caused to the ground floor. The learned counsel submitted that the tin roof on the second floor is damaged and unless the same is repaired by replacing or re-fixing tin sheets, the rain water would percolate in the shops of the applicants which are on the ground floor. The learned counsel submitted that though it is the contention of respondent nos.2 to9 that no repairs are possible to first and second floor of the subject building, according to the applicants it is possible to carry out such repairs.

5. The learned counsel brought to my notice the earlier reports submitted in respect of the structural stability of the suit building. The learned counsel brought to my notice that to have independent assessment of the structural stability of the subject building, the request was made by respondent no.1-corporation to the College of Engineering, Pune which is an autonomous college to conduct the structural audit of it and submit its report. The learned counsel submitted that such report has been submitted by the College of Engineering, Pune and the same

has been filed on record by respondent no.1-corporation. Taking me through the said report, the learned counsel submitted that considering the findings recorded in the said report, the request of the petitioners-applicants needs to be allowed.

6. The learned counsel submitted that the petitioners-applicants are ready to undertake the repairs, as are suggested in the report submitted by COEP at their cost, if they are not carried out by respondent nos.2 to 9. The learned counsel in the circumstances, prayed for allowing the civil application.

7. Shri Katneshwarkar, the learned counsel appearing for respondent nos.2 to 9 resisted the submissions advanced on behalf of the petitioners-applicants. The learned counsel submitted that due to urgency pleaded by the petitioners-applicants, the respondents could not file their affidavit in reply within the short period, however, the averments in the application are wholly denied by respondent nos.2 to 9. The learned counsel raised a preliminary objection as about the maintainability of the suit filed by the petitioners-plaintiffs which has given rise for further proceedings. The learned

counsel pointed out that the notices issued by respondent no.1 under Section 264 of the Maharashtra Municipal Corporation Act, could not have been challenged by the petitioners by filing the suit in view of the specific bar provided under Section 433-A of the said Act.

8. The learned counsel further submitted that even on merits, the request so made by the petitioners-applicants deserves to be rejected. The learned counsel taking me through the documents on record submitted that the subject building is admittedly more than 90 years old. The learned counsel submitted that first notice was issued by respondent no.1-corporation in the year 1983 and since then, repeatedly the notices are being issued for demolishing the entire building, so as to ensure safety of the citizens passing by the said road and the adjacent residents. The learned counsel submitted that Shri Sanjay Pawar, the consulting engineer on the panel of the respondent-corporation in his report has in clear terms opined that no repairs were possible of the subject building and the only option was to pull down the entire structure of the subject building. The learned counsel read out the entire said report.

9. The learned counsel submitted that the report

submitted by the another engineer on the panel of the respondent-corporation namely Shri Rajkumar Munot was restricted to the property in occupation of the petitioners-plaintiffs and not in respect of the entire building. The learned counsel submitted that the report submitted by Shri Munot, therefore, may not be material in the present matter. The learned counsel submitted that the entire building is now kept vacant and respondent nos.2 to 9 though have purchased it by giving valuable consideration for that are unable to use it since, it is beyond repairs and cannot be made habitable unless the structure is pulled down and new construction is carried out thereupon.

10. The learned counsel submitted that the old structure is of bricks and masonry wall as mentioned in the report of Sanjay Pawar and is in total dilapidated condition and beyond repairs. The learned counsel in the circumstances, prayed for rejecting the application filed by the petitioners-applicants.

11. Shri Lokhande, the learned counsel appearing for respondent no.1-corporation submitted that the corporation is more concerned with the safety of the occupants of the said building as well as the occupants of adjacent buildings

and the citizens at large. The learned counsel submitted that as per the record and as per the report submitted in respect of the subject building by the municipal engineers and the engineers on panel of the municipal corporation, the structure has become so dangerous that it has to be pulled down and accordingly the notices are issued. The learned counsel in the circumstances, has prayed for rejecting the request of the applicants.

12. I have given due consideration to the submissions made by the learned counsel appearing for the respective parties. At the outset, it has to be made clear that at present, I am considering only the civil application filed by the petitioners-plaintiffs and the request made therein. Though the maintainability of the suit itself is challenged by the learned counsel, the said objection would be considered at the time of final hearing of the petition. At present, the only question to be considered is whether the prayer made by the applicants in the present application deserves to be considered.

13. The crucial issue in the present matter is the condition of the subject building. The reports which are on record are varying from each other. In the report submitted

by Shri Sanjay Pawar, it is his opinion that the building is beyond repairs and needs to be pulled down; whereas, the report of Shri Rajkumar Munot says otherwise. However, I do agree with the submission made by Shri Katneshwarkar that the report submitted by Shri Rajkumar Munot since pertains to the premises in occupation of the petitioners-plaintiffs, which are on ground floor may not be that material while deciding the controversy in the matter. However, from the material on record, it is revealed that looking to the rival combinations and to bring on record some independent opinion, the respondent no.1-municipal corporation had requested the College of Engineering, Pune which is an autonomous body to carry out the structural audit and to submit its report. Accordingly, the report has been submitted and the corporation has filed it on record.

14. I have carefully perused the said report. The findings recorded in the said report were brought to my notice by the learned counsel appearing for the petitioners-applicants. I deem it appropriate to reproduce here-in-below the conclusions recorded in the said report which are under the caption "Comment on structural stability of the Building and Recommendations" and which read thus:

"The Kapad Bazar building (Municipal House

No.2557/58, City Survey No.3565,) is inspected and structurally audited as per requirements of current codal provisions. In general, it falls under category of V3. As such as on date, no structural distress is found in structural wall and flooring. The 3D analysis of building with consideration of various loads and their combinations has projected that the structural actions and stresses are well within the limit. The functional use of building (first and second floors) could be made possible subjected to compliance/pertaining to repairs/replacement and restoration of roof, balcony and up gradation of doors and windows with provisions of separate access to first and second floor under the technical guidance and provisions.”

15. The photographs are also annexed with the said report. Admittedly, the said photographs are of the period when structural audit was carried out by the team of COEP. The subsequent photographs are also brought on record by the petitioners as well as respondent nos.2 to 9. The photographs show that some more tin sheets have been blown, may be in the recent storm allegedly suffered by the city of Ahmednagar.

16. Considering the report of COEP, it prima facie appears that there is no structural distress found in structural wall and flooring. As has been observed in the report of COEP, the 3D analysis of building with

consideration of various loads and their combinations has projected that the structural actions and stresses are well within the limit. The report also recommends that the functional use of the building (first and second floors) could be made possible subjected to compliance/pertaining to repairs/replacement and restoration of roof, balcony and upgradation of doors and windows with provisions of separate access to first and second floor under the technical guidance and provisions.

17. A specific query was made by this Court to the learned counsel appearing for the petitioners-applicants that if directions are given by this Court to respondent nos.2 to 9 to carry out repairs as are suggested in the report of COEP and if they fail to carry out such repairs, whether petitioners-applicants are ready to carry out whole of the said repairs since their request is only to repair tin roof in the application so filed. The learned counsel, on instructions, submitted that the petitioners-applicants are ready to carry out the said repairs as are suggested in the report submitted by COEP. The learned counsel further submitted that the petitioners-applicants also undertake not to claim expenses which may be incurred by them from the respondents.

18. After having considered the submissions made, it appears to me that the petitioners-applicants have certainly made out a case for allowing the present application. In the result, the following order is passed:

ORDER

- i) Respondent nos.2 to 9 are directed to carry out the repairs in the subject building as are suggested in the report of COEP, which is at page no.168 to 182 of the paper book in the present matter.
- ii) Needless to state that, before carrying out any such repairs, proper application shall be made to the appropriate authorities of respondent no.1-corporation and it is further directed that the concerned department of the respondent no.1-corporation, having regard to the urgency in the matter and taking into account that monsoon is likely to be active, shall consider the said application, if filed as expeditiously as possible and preferably within a week from its receipt and communicate its decision to them.
- iii) It is further directed that if respondent nos.2 to 9 fail in making such application and avoid to carry out the repairs as are directed within the given period, it would be open for the petitioners-applicants to move such application and carry out repairs strictly as per the COEP report and under

the technical guidance and provisions as mentioned in the said report by following the procedure mentioned in Clause (ii) above.

iv) As undertaken by the applicants, they would not claim the expenses which may be incurred by them in carrying out the repairs, from the respondents.

v) The application stands allowed in the aforesaid terms.

vi) List the petition on 09.07.2019 for further consideration in urgent category.

(P.R. BORA, J.)

Mujaheed//