

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER (STAMP) NO.1732 OF 2019
WITH
CIVIL APPLICATION (STAMP) NO.1734 OF 2019
IN
APPEAL FROM ORDER (STAMP) NO.1732 OF 2019**

Joginder Singh Mokha

...Appellant

Versus

Municipal Corporation of Greater
Mumbai and Ors.

...Respondents

.....

Mr. Omprakash Pandey with Ms Aneeta Vasani for the Appellant.

Mr. Sanjeev R. Singh with Mr. Ritesh Singh and Ms Jyoti S. Agrawal for
the Respondent No.2.

Mrs Madhuri More for the Respondent No.1-MCGM.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 7th FEBRUARY, 2019.

P.C.:-

With consent, heard finally at the stage of admission.

2. The Appellant herein has challenged the order dated 18th December, 2018 whereby the learned Ad-hoc Judge, City Civil Court, Borivali Division, Dindoshi, Mumbai has dismissed the Notice of Motion No.4406 of 2018 filed in Civil Suit No.3117 of 2015.

3. The Appellant is residing in a building known as Andheri Vile Parle Punjabi Co-operative Housing Society. The Respondent

No.1-Corporation had issued notices dated 5.1.2015 and 25.6.2015 under Section 354 of the Mumbai Municipal Corporation Act, 1888 (for short 'MMC Act') to the Appellant and the other occupants of the building. The Appellant had challenged the said notice in Writ Petition (Lodging) No. 2631 of 2005 and 2561 of 2015. There were conflicting opinions of the Experts in respect of the structural status of the building. Since the Respondent No.1-Corporation had not referred the matter to the Technical Advisory Committee (TAC), the writ petition was disposed of with liberty to the Appellant and others to adopt the remedy of filing civil suits.

4. Pursuant to the said order the Appellant filed a civil suit for declaration that the notice was illegal and bad in law. The Appellant also sought to restrain the Respondent No.1-Corporation from demolishing the building and /or dispossessing /evicting them from the said building on the strength of the notice issued under Section 354 of the MMC Act.

5. By order dated 18.11.2015 the learned Judge, City Civil Court, Mumbai granted ad-interim relief and directed the parties to maintain status-quo till direction in Writ Petition No.1135 of 2014 were complied with. The records indicate that the Respondent No.1

-Corporation had thereafter referred the matter to TAC. The report of the TAC was received on 5.10.2018 and thereupon the Respondent No.1 disconnected water and electricity connection on 14.11.2018. The notice of motion for interim relief came to be dismissed on merits by the impugned order dated 18th December, 2018.

6. Mr. Omprakash Pandey, the the learned counsel for the Appellant submits that the Respondent No.1-Corporation has disconnected water and electricity connection while the order of status-quo was in force, without obtaining permission of the Court. He contends that the Appellant and others are residing in the said building and that they have given an undertaking that they are ready to reside in the said building at their own risk. He therefore, submits that the Respondent No.1-Corporation be directed to restore the water and electricity connection.

7. Ms Madhuri More, the learned counsel for the Respondent No.1-Corporation and Mr. Sanjeev Singh, the learned counsel for the Respondent No.2 submit that out of 36 members only three members have refused to vacate the premises. They contend that TAC report clearly indicates that the building is in dilapidated condition. The building is situated by the side of the main road and Metro Station.

Considering the precarious condition of the building, there is every possibility of the building collapsing and causing damage to the life and property of the public.

8. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties. The grievance of the Appellant is that the Corporation has disconnected water and electricity supply in breach of status-quo order dated 18th November, 2015. The said order reads thus:-

- “1. Defendants/Corporation is directed to maintain status quo in respect of the suit property until the directions given in the writ petition No.1135/14, in the case of MCGM/V/s. State of Maharashtra and Others are followed by the Defendants/Corporation or till the next date whichever is earlier.*
- 2. Defendants/Corporation is also directed to take further steps expeditiously considering the risk involved in the suit building.*
- 3. It is also clarified that, during the interregnum, the Defendants/Corporation would be at liberty to take all safety measures, including propping up etc., of the building premises and enclose/fence the surrounding area in accordance with law.*
- 4. The above said order in no way restrict the power and scope and purpose of sec. 354 of MMC Act, Defendants/Corporation shall act in accordance with law by following other pre-steps as per the provisions of law.*
- 5. Plaintiffs are directed to take precautions to save their life and property, in case suit building is dilapidated.”*

9. A plain reading of the interim order clearly indicates that

the status quo order was not for an indefinite period but was to operate till the directions given in the Writ Petition No.1135 of 2014 were complied with or till the next date, whichever was earlier. It is not in dispute that subsequent to the said order and in accordance with the directions given in Writ Petition No.1135 of 2014 the Respondent No.1-Corporation had referred the matter to TAC. The TAC report was received on 5.10.2018. The conclusion of the report reads thus:-

“TAC CONCLUSION

“The structure known as Andheri Vile Parle Punjabi CHS Ltd. two building in premises situated at 92 J.P. Road, Opp. Dena Bank, Andheri (W), Mumbai-400 058, is deteriorated and dilapidated in condition, may collapse without giving any warning thereby endangering life and property of residents and people residing in adjoining properties and passers thereby. Hence the structure under reference needs to be vacated and demolished immediately.

In view of above, it is unanimously declared that the structure known as Andheri Vile Parle Punjabi CHS Ltd. two building in premises situated at 92, J.P. Road, Opp. Dena Bank, Andheri(W), Mumbai 400 058, falls in C-I Category (to be vacated and demolished immediately).”

10. The TAC report clearly indicates that the building falls in C1 category and is in totally dilapidated condition and can collapse at any time. In the light of the said report and as per the directions given by the trial court viz. to take further steps considering the risk involved, the Respondent No.1-Corporation disconnected the water

and electricity supply. The action of the Respondent No.1 is not in breach of the order, but is in compliance with the order of the trial court.

11. The contention of the learned counsel that the Appellant should be allowed to reside in the building at his own risk, has no merits. The Expert report indicates that the building is in totally dilapidated condition and is unsafe for human habitation. Further the TAC report indicates that the building can collapse at any time. The building is situated near the Metro Station and is abutting the main road. Collapse of the building will not only pose danger to the life of the Appellant and other habitants of the building but will lead to loss of lives and property of the passersby /pedestrians and other members of the public. Considering the above facts and circumstances, particularly the drastic consequences, the Respondent No.1-Corporation cannot be restrained from discharging its statutory duties.

12. Under the facts and circumstances, the learned Judge was perfectly justified in dismissing the notice of motion. The order is neither perverse nor illegal. Hence, the appeal is dismissed.

13. In view of the above order, the civil application does not survive and stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)