

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER STAMP NO. 15473 OF 2019
WITH
CIVIL APPLICATION STAMP NO. 15474 OF 2019
WITH
CIVIL APPLICATION STAMP NO. 16805 OF 2019

Jayesh Ramniklal Gandhi

.. Appellant

Vs.

Municipal Corporation of Greater
Mumbai and anr.

.. Respondents

Mr.I.R.Tripathi i/b Mr.C.K. Tripathi, for the Appellant.

Mrs.Madhuri More, for the MCGM.

Mr.Laxminarayan Shukla i/b M/s.Legal Vision, for Applicant in
CAST/16805/2019.

Deepak L.Gholam, AE (B&F), K/West.

CORAM : M.S.KARNIK, J.

DATE : 09th JULY, 2019

P.C. :

. The appellant in this Appeal has challenged the order dated 04/05/2019 passed by the Ad-hoc Judge, City Civil Court, Mumbai dismissing the Notice of Motion taken out by the appellant to restrain the Corporation from taking any action

pursuant to the notice dated 18/01/2019. By the notice dated 18/01/2019, the appellant was called upon to vacate the building as the same was in dilapidated condition and required to be pulled down. The appellant submitted a report of his structural consultant Sardar Patel College of Engineering. The report concluded that the structure is repairable. In this view of the matter, the issue was referred to the Technical Advisory Committee (for short 'TAC'). The TAC by report dated 11/10/2018 concluded that the building is deteriorated and in dilapidated condition and hence needs to be vacated and demolished.

2. Learned Counsel for the Corporation submitted that all the structural consultant reports were considered by TAC in the meeting that is held in the light of guidelines of the Corporation for declaring private and municipal building as C-1 category (Dangers, Unsafe). As per guidelines - 1.05, it is provided that TAC shall hear the concerned structural consultants during the meeting.

3. Learned Counsel for the Municipal Corporation submitted that the TAC has taken into consideration all the reports and thereafter concluded that the building is in a dilapidated condition. She invited my attention to the observation in the report that the representative of appellant is absent in the meeting. She also invited my attention to the E-mail dated 28/09/2018 sent to info@spce.ac.in informing about the meeting to be held on 28/09/2018 at 3.00 p.m. She thus submitted that despite issuance of the notice, structural consultant of appellant failed to remain present.

4. Learned Counsel for the appellant reiterated that they have not received such a notice. He would submit that they were not aware about the meeting of the TAC. He further submitted that Sardar Patel College of Engineering is deputed as structural consultant which has given a favourable report.

5. Heard. No doubt, the TAC has taken into consideration reports submitted by both tenants and owners as

well as MCGM. The guideline 1.05 requires that the TAC shall give hearing to concerned structural consultants during the meeting. Even the E-mail which has been produced by the Corporation is addressed to info@spce.ac.in. The appellant categorically denied that the same is his e-mail id. The same obviously appears to be that of Sardar Patel College of Engineering. The appellant was not aware of such E-mail sent to Sardar Patel College of Engineering. In my opinion, in the interest of justice, one opportunity needs to be given to the appellant so as to enable his structural consultant to be heard during the meeting of TAC. Therefore the issue needs to be considered afresh after hearing the structural consultant of the appellant. The appellant undertakes that his structural consultant will remain present before TAC on 18/07/2019 at 11.30 a.m. when the TAC will hold a fresh meeting.

6. After complying with the guidelines - 1.05, TAC to pass a fresh order in accordance with law.

7. The impugned order of the trial Court therefore is set aside. Even order passed by TAC will have to be set aside.

8. In this view of the matter, learned Counsel for the appellant states that they will take steps to withdraw the Suit within a period of one week from today.

9. The learned Counsel for the appellant on instructions states that the appellant would be residing in the suit premises at his own risk and shall not hold anybody including Corporation responsible in the event of any mishap.

10. Appeal From Order is disposed of in the above terms. In view of disposal of the Appeal from Order, Civil Applications do not survive and the same shall stand disposed of.

(M.S.KARNIK, J.)