

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

**APPEAL FROM ORDER (STAMP) NO.15885 OF 2019
WITH
CIVIL APPLICATION (STAMP) NO.15886 OF 2019
IN
APPEAL FROM ORDER (STAMP) NO.15885 OF 2019**

Sayed Habibur Rehman Alias Babu ...Appellant

V/s.

The Municipal Corporation of
Greater Mumbai & Anr.

...Respondents

....

Mr. Bipin Joshi a/w Mr. Prayag Joshi and Mr. Sahil Ansari,
advocates for the appellant.

Mrs. More, advocate for the respondent No. 1/MCGM.

Mr. P. G. Sabnis, advocate for the respondent No. 2.

....

CORAM : M.S.KARNIK, J.

DATE : 11th JUNE, 2019

P.C. :

1. Heard learned counsel for the appellant and learned counsel for the respondents.
2. The appellant seeks to challenge the order dtd.14/05/2019 passed by the Judge, City Civil Court, Bombay rejecting ad-interim injunction in favour of the appellant.
3. It is the case of the appellant that he is in lawful use,

occupation and possession of the suit premises since 1960. The MCGM issued notice under section 354 of the Mumbai Municipal Corporation Act, 1888 on the ground that the building is in a very dilapidated condition.

4. Learned counsel for the appellant submits that the said notice has been issued at the instance of the landlord who wants to demolish the building and deprive the occupant/appellant of his rights of tenancy. It is the submission of the learned counsel for the appellant that the building is not in dilapidated condition and is repairable. He relied upon a report submitted by one M/s. Powle P. N. & Associates, who are structural engineers. As per the conclusion of the consultants, it is observed that the structure can be repaired under tenantable repairs. It needs minimum six months. Further observation is pointed out that the the structure can be allowed to be occupied during the course of repairs.

5. Learned counsel for the appellant would submit that the landlord had submitted a report of M/s. Sterling Engineering Consultancy Services Pvt. Ltd., who are the structural engineers.

The said structural engineers concluded that the building is not safe for occupancy and is beyond repair and required to be evacuated immediately.

6. The report of the Technical Advisory Committee (TAC) dtd.25/04/2019 was challenged by the appellant on various grounds before the City Civil Court. The grounds raised by the learned counsel are that the report of the TAC committee is vitiated in as much as the findings and conclusions are recorded by the committee other than the committee which heard the structural auditors of the appellant. He would submit that originally the TAC committee meeting dtd. 06/03/2019 comprised of 6 members, however, when the issue was considered on 24/04/2019, the committee comprised of 4 members, of which 2 of the members were not part of the earlier committee. He would moreover submit that the TAC committee has not taken into consideration the guidelines which it was bound to follow as per the directions of this court in Writ Petition (L) No.1135 of 2014. He would submit that according to clause 9 (d)(ii), it was incumbent upon the TAC committee to

take steps to carry out various test before coming to the conclusion that the building is in dilapidated condition. In any case, he would submit that the TAC committee has not considered the report of the structural engineers of the appellant, but has merely relied upon the report of the structural engineers, as submitted by the landlord.

7. He would moreover submit that the trial court has not considered the submissions advanced by him and only proceeded to reject the ad-interim relief on the basis of the photographs submitted by the MCGM.

8. Learned counsel for the respondent No. 1/MCGM on the other hand supported the findings of the trial court and the report of the TAC committee. My attention is invited to the observations of the TAC committee report and the order passed by the trial court.

9. Heard learned counsel for the parties. There is some substance in the submission of the learned counsel for the appellant that the order which is passed by the TAC committee did not comprise of some of the members who had heard the

structural engineers of the appellant. However, having regard to the findings of the TAC committee which has considered this issue also, in my opinion the said aspect is not sufficient to discard the ultimate conclusions drawn by the TAC committee in the facts of the present case. The TAC committee has been constituted pursuant to the order passed by this court in Writ Petition (L) No.1135 of 2014. It comprises of experts. As an expert body it has arrived at the conclusion based on the materials on record. It is not as if the structural engineer for the appellant was not heard. In fact two of the members, the Dy. Ch. E. (B.P.) E. S. as a Chairman and the Assistant Law Officer of the T Ward, were the members of the original committee which heard the structural engineer.

10. It is not contention of the appellant that the structural auditor of the landlord was heard by this committee and no such opportunity was given to the structural auditor of the appellant. As an expert body, it has taken into consideration the two reports and arrived at a conclusion as under :-

“TAC Conclusion :-

“On basis of the reports submitted by the Structural Auditors, visual inspection carried out by the members of the TAC & proceedings of this meeting, it is unanimously decided by the TAC that the structure known as Matruchhaya Building situated at N.S. Road, Mulund (West), Mumbai 400080, is structurally deteriorated and is in dilapidated condition. The building may collapse without giving any warning thereby endangering life and property of occupants of the building and also the occupants of the adjoining properties and passers thereby.

In view of the above, it is unanimously declared that the above cited structure falls under C-1 Category. Therefore the structure under reference needs to be vacated and demolished immediately.

A.E.(B.&F.) T ward shall therefore take necessary action as per the policy guidelines issued in this regards.”

11. I have also seen the photographs which are produced on behalf of the MCGM as well as by the appellant. Upon perusal of the photographs, it appears that the condition of the building does not appear to be sound. Nevertheless, once the expert body comes to a conclusion that the building is structurally deteriorated and is in dilapidated condition based on the structural reports on record, it is not open for me to arrive at a different conclusion. Even the objection of the learned counsel for the appellant that the TAC should have personally inspected

the building and carried on the tests is untenable, as this court has observed that specific test may be carried out as may be considered by the TAC. In this view of the matter, I see no reason to interfere with the order passed by the trial court.

12. Learned counsel for the appellant expressed his apprehension that after the building is pulled down, the rights of the occupant would be defeated. It is made clear that the development shall be carried out in consonance with the protection which is available to the occupant in the form of the policy framed by MCGM in respect of the development of dilapidated buildings and also as provided by section 499 of the Mumbai Municipal Corporation Act, 1888 and as per other provisions of law as may be applicable.

13. In this view of the matter, I see no reason to interfere with the trial court's order. The Appeal is dismissed.

14. In view of the dismissal of the Appeal, nothing survive for consideration in Civil Application. The Civil Application is disposed of.

(M.S.KARNIK, J.)