

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7146 OF 2015

Ghanshyam Ramanad Kasat (deceased)

through legal heir Mr. Kailash G. Kasat

and others

... Petitioners

Versus

The State of Maharashtra and others

... Respondents

.....

Mr. Rahul Kadam for the Petitioners.

Mr. Aurup Dasgupta alongwith Ms. Jinal Vani instructed by Jhangiani, Narula and Associates for Respondent No.5.

Ms. S.D. Vyas, AGP for the Respondent-State.

Mr. A.S. Rao for the Respondent-Corporation.

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CORAM : S.J. KATHAWALLA AND
B.P. COLABAWALLA, JJ.

DATED : DECEMBER 17, 2019.

P.C. :-

1. The subject property is Patel Bhavan, Near Bazar Peth Police Station, Kalyan (West). The property is about 78 years old and is in a dilapidated condition. The landlord/developer submitted reports of the Structural Engineer dated 30th April, 2014 and 17th October, 2014, pointing out that the structure is in dilapidated condition and needs to be demolished. Pursuant thereto, the Corporation being satisfied that the subject building is in a dilapidated condition, issued notices to the owners/occupiers

of the subject building dated 11th July, 2015, 25th May, 2016 and 15th March, 2016 under Sections 264 and 268 of the Mumbai Municipal Corporation Act, 1949, calling upon them to vacate their respective premises as the subject building was to be demolished.

2. Seven occupiers have filed the above Petition impugning the said Notices and alleging that the Notices are issued at the instance of the landlord/developer and the condition of the subject building is not as dilapidated as is alleged in the Reports of Structural Auditors submitted by the landlord/developer. It was also pointed out that the subject building is not falling under C-1 category i.e. the building is required to be vacated and demolished.

3. After hearing the matter for sometime on 19th November, 2019, the Learned Advocate appearing for the Petitioner on instructions from Petitioner No.1 requested the Court to appoint an independent Architect to audit the structure by carrying out all the scientific tests and submit his report to this Court. The Petitioners also agreed to bear the expenditure of the Architect. In view thereof, this Court appointed Mr. Amol Shetgiri of M/s. Shetgiri and Associates, Architects, to visit the subject building and submit a structural report after carrying out the necessary scientific tests. Since the scientific tests involve substantial costs, Mr. Shetgiri was directed to inform his charges to enable the Court to direct the Petitioners to deposit the said amount in Court. Before Mr. Shetgiri could give his estimate, the Learned Advocate for the Petitioners made an application before the Court with a request to appoint an Architect/Structural Engineer operating within the jurisdiction of the

Kalyan-Dombivli Municipal Corporation, instead of Mr. Amol Shetgiri. The Learned Advocate for the Petitioner also suggested that the Court may not direct the Architect to include scientific tests, but may leave it to the Architect to decide whether any scientific tests are required to be carried out. In view thereof, at the instance of the Petitioners, an independent Structural Architect i.e. Mr. Rajesh Mhatre was appointed to carry out structural audit of the subject building and submit his report to this Court in a sealed cover, on or before 10th October, 2019. The Petitioners undertook to pay the costs/charges of Mr. Mhatre.

4. Mr. Mhatre, has submitted his detailed Report to this Court on 15th December, 2019, alongwith the photographs of the subject building. The Report is taken on record and marked 'X' for identification. Mr. Mhatre has after setting out the problems in the subject building opined that, *“the building (structure 1, structure 2 and structure 3) is not structurally safe or stable and its structural condition has deteriorated beyond the stage of economic repairs and sudden collapse can happen any time. Therefore the structure is not, fit for human habitation and needs to be demolished after cleaning it of all the occupants therein. Demolition of structure should be carried out manually for safety purpose under supervision of experience civil engineer. All non-used material should be disposed/scraped. Building (structure 1, structure 2 and structure 3) is in C-1 category which is to be vacated and demolished on prior basis.”*

5. The Learned Advocate for the Petitioners now states that this Report

should be sent to the Municipal Commissioner and he should take a decision after considering the Report. In our view, the question of sending the said Report to any other authority for further consideration does not arise, since an independent Architect was appointed and that to at the instance of the Petitioners and there is no reason to doubt his Report. In fact, the Report is in conformity with the Reports earlier submitted by the Respondent No. 5- the landlord. The Corporation too being satisfied that the subject building is in a dilapidated condition and needs to be demolished, had issued notices from time to time calling upon the owner / occupiers to vacate the subject building for demolition.

6. It is because of the conduct of the tenants like the Petitioners, who at every stage oppose demolition of dilapidated buildings, we from time to time are pained to note several incidents of collapse of unsafe buildings, resulting in loss of life and property. Since the independent Architect appointed at the instance of the Petitioners himself opined in his Report that the subject building is not structurally safe or stable; its structural condition has deteriorated beyond the stage of economic repairs; and that sudden collapse can happen at any time and the structure unfit for human habitation, we cannot allow any of the tenants / occupiers to continue their stay in the subject building and take the risk of losing their lives and property, even if they are ready to give an undertaking that they are willing to do so at their own risk. The risk involved is not only with regard to the lives of the tenants or their family members alone, but such structures are also a grave risk to the persons in and around

the area when an unfortunate incident of building collapse takes place.

7. We therefore dismiss the above Writ Petition, with a direction to the Corporation to proceed with the matter in accordance with law.

8. The Petitioners undertake to pay the charges of Mr. Rajesh Mhatre, Structural Engineer, Architect. The above Writ Petition is accordingly disposed off.

(B.P. COLABAWALLA, J.)

(S.J. KATHAWALLA, J.)