

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

**APPEAL FROM ORDER (ST.) NO.17257 OF 2019
WITH
CIVIL APPLICATION (ST.) NO.17260 OF 2019
IN
APPEAL FROM ORDER (ST.) NO.17257 OF 2019**

Paramanand Pahilajrai and Ors. ... Appellants
Versus
Municipal Corporation of Greater Mumbai
and Ors. ... Respondents

.....

Mr. J.G. Damani for Appellants.
Mr. J.F. Reis, Senior Advocate I/b. Mrs. Madhuri More for
M.C.G.M./Respondent.

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CORAM : M. S. KARNIK, J.

DATE : 27th JUNE, 2019.

P. C.:

1. Heard.
2. Leave to amend so as to add additional grounds to the appeal memo.
3. The order under challenge in this Appeal is an order dated 14.06.2019 passed by the Ad-hoc Judge, City Civil Court at Dindoshi, Borivali Division, Goregaon, Mumbai dismissing the

Notice of Motion filed by the appellants-original plaintiffs. The Notice of Motion was taken out by the plaintiffs for injunction declaring that letter dated 19.10.2018 along with notice dated 08.11.2016 including the Technical Advisory Committee ('T.A.C.' for short) report dated 09.08.2018 in respect of the suit property known as "Ram Bihari Bhuvan" be held illegal, bad-in-law and for appropriate restraining orders.

4. The appellants claim to be occupants of the building in respect of which by notice under Section 354 of Mumbai Municipal Corporation Act, 1888 dated 08.11.2016 the Corporation had called upon owners/trustees/tenants of the said building to pull down the entire building comprising of ground plus one upper floor. Based on the said notice the T.A.C. submitted the report that the building has to be categorised as C-1. This report of the T.A.C. was challenged before this Court by way of Writ Petition No.2295 of 2017. The Division Bench of this Court by an order dated 7.2.2018 directed the T.A.C. to reconsider the matter after the parties submit fresh structural auditors report. Accordingly the Corporation appointed M/s. Shashank Mehendale

and Associates as structural consultant. By the report dated 19.05.2018 M/s. Shashank Mehendale and Associates submitted their report. In this report building is categorised as C-1. The appellants did not however submit a fresh structural auditors report. The T.A.C. considered the reports on record and by the report dated 10.10.2018 came to the conclusion that the structure in question needs to be vacated and demolished immediately.

5. The appellants thereafter filed the structural audit report prepared by M/s. Prime Management and Consultancy on 5.11.2018. In the said report it is observed that the building will fall within the category of 'C2-B' that is no eviction but only structural repairs are required.

6. Assailing the report of the T.A.C. dated 10.10.2018, 19.10.2018 and the order passed by the City Civil Court, learned counsel for the appellants made the following submissions :-

1) There are two reports viz. M/s. N.M. Consultants and M/s. Prime Management and Consultancy in favour of the appellants which categorised the building as 'C2-B'. It is at the behest of the landlord that the action is taken by the Corporation.

2) M/s. N.M. Consultants have inspected only part of the structure being room No.21 and 30 which is in occupation of the landlord and they have without inspecting the entire building submitted a report. In the submission of the learned counsel, M/s. Shashank Mehendale and Associates should have carried out the inspection in the presence of the appellants. According to the learned counsel the portion which was inspected by M/s. Shashank Mehendale and Associates was lying unused and vacant for long number of years. The learned counsel would rely upon photographs to show that building is habitable and requires only repairs. He would further submit that the report of M/s. Prime Management and Consultancy was not taken into consideration. According to him the report of the M/s. Prime Management and Consultancy was not submitted immediately after the order was passed by this Court on 07.02.2018 as certain tests were required to be carried out which took time. According to him the Corporation did not give the appellants any notice that they had come to inspect the premises along with the structural auditors M/s. Shashank Mehendale and Associates.

3) Learned counsel would submit that tenants are ready to bear the expenses for repairs of the structure. According to him even the report of the M/s. Shashank Mehendale and Associates clearly indicates that the structure can be repaired. Learned counsel would submit that the Civil Court has not taken into consideration all these aspects.

4) According to him the T.A.C. has failed to consider the report in favour of the appellants and mechanically accepted the report filed by M/s. Shashank Mehendale and Associates. Another submission of learned counsel for the appellants is that the appellants should have been given notice before M/s. Shashank Mehendale and Associates inspected the premises and the said inspection and tests should have been carried out in their presence.

7. On the other hand learned Senior Counsel for the Corporation invited my attention to the order passed by this Court on 07.02.2018 and the report of the T.A.C. dated 10.10.2018 as well as the order dated 19.10.2018. He would submit that the

T.A.C. being an expert body had after considering the structural audit reports and also upon hearing the structural consultants came to the conclusion that the structure needs to be demolished. He relied upon the photographs of the structure to demonstrate that the same is in dilapidated condition.

8. Heard learned counsel. The Division Bench of this Court by an order dated 07.02.2018 had directed the T.A.C. to submit a fresh report. An opportunity was given to the appellants also to submit a report. Accordingly M/s. Shashank Mehendale and Associates appointed by the Corporation submitted structural audit report on 19.05.2018. The submission of the learned counsel for the appellants is that certain tests were required to be carried out which took some time and therefore their report could not be filed before the T.A.C. passed the order dated 10.10.2018. This submission is devoid of any merits. The order dated 07.02.2018 in Writ Petition No.2295 of 2017 passed by this Court is categorical. The Corporation was directed to file a fresh report and even the appellants were permitted to appoint its own structural consultant to carry out test. The said report was not filed by the Appellants though they had sufficient time on hand.

After this Court's order dated 07.02.2018, the T.A.C. decided only on 10.10.2018 by which time the appellants failed to file the report. In any case the T.A.C. has taken into consideration the earlier report filed by appellants Structural Engineers in which conclusions drawn are similar to the one of M/s. Prime Management and Consultancy. This therefore is not a good ground for interfering with the T.A.C. report.

9. Even the contention of the learned counsel M/s. Shashank Mehendale and Associates should have carried out tests after notice to the appellants and in their presence can only be stated to be rejected. There is no requirement in the rules and regulations that the structural auditors appointed by the Corporation have to carry out the tests after notice to the appellants. The requirement is that the appellants also have an opportunity of submitting their own structural auditors report.

10. I have gone through the report of the T.A.C. dated 10.10.2018. I find that after considering all the reports and also the report submitted by M/s. N.M. Consultants submitted by appellants that the T.A.C. came to the conclusion that the building

is categorised as C-1. Moreover as per the guidelines even the appellants consultant was heard by T.A.C. It would be material to reproduce the relevant portion of the T.A.C. report which reads thus :-

“Mr. Vijay Kadam from M/s. Shashank Mehendale and Associates appointed on behalf of MCGM has appraised in regards of said building that which is as under :-

As per repair /partial reconstruction methodology mentioned in the enclosed Structural Audit report, Repair cost in about 48.75% of Reconstruction Cost. Hence, a portion of the said building being in dangerous condition and rest of the portion of the building in deteriorated condition, the said building shall be immediately vacated and pulled down and it is recommended to immediately vacate the building known as “Ram Bihari Bhuvan” at Near Lallubhai Park, Andheri (W), in K/W ward and the said building shall be demolished.

T.A.C. members have gone through the structural Audit Reports, Proforma B and facts put up by all structural consultants, opinion/reports of ward staff and observations made during the site visit. The issues related to the structure under reference were discussed during the meeting in detail, when , all 3 consultants have declared the said structure as C-1 category for the reasons stated above.

In view of the visual observations made and results of NDT carried out by structural auditors, opinion and report of ward staff and above observations of T.A.C., T.A.C. is of the opinion that the said structure needs to be evacuated since it is deteriorated, dilapidated and dangerous in condition and unsafe for habitation, thereby endangering life and property residents and people residing in adjoining properties and passers thereby. Therefore it is advisable to vacate and demolish the structure by protecting the rights of tenants as per clause 1.15 of the policy guidelines dated 25.05.2018, which was vetted by Hon'ble High Court in the matter of Writ Petition No.1080 of 2015.

T.A.C. CONCLUSION :-

The structure known as Ram Bihari Bhuvan situated on plot bearing C.T.S. No.584, 584/1 to 16, F.P. No.70 and New F.P. No.58 of Taluka Andheri, TPS-III in village Vile Parle (W) Mumbai 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 passes 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 Ram Bihari Bhuvan situated on plot bearing C.T.S. No.584, 584/1 to 16, F.P. No.70 and New F.P. No.58 of Taluka Andheri, TPS-III in village Vile Parle (W) Mumbai falls in C-1 category.

Designated Officer, K/W Ward shall therefore take necessary action as per the policy guidelines dated 25.05.2018.”

11. It would be material to note that the T.A.C. has observed that as per the directives of this Court on 07.02.2018 the T.A.C. appointed M/s. Shashank Mehendale and Associates as structural consultant to carry out structural audit of the said building. It is further material to note that in the report it has been mentioned that as per the policy guidelines, the T.A.C. inspected the said structure on 05.07.2018 at 11.30 a.m. and structural engineers were also present. It has been observed that the building is old and it is deteriorated, dilapidated and in dangerous condition and unsafe for habitation, thereby endangering life and property of residents and people residing in the properties and passerby. The T.A.C. has directed to take immediate action to vacate and demolish the said building.

12. The T.A.C. being an expert body has taken into consideration various structural reports including the report which has been submitted by the appellants. The T.A.C. has inspected the building. The T.A.C. has heard the structural engineers.

Having gone through the order passed by the T.A.C. I am of the opinion that it is not open for this Court to substitute its opinion for the T.A.C. if all materials are taken into consideration.

13. I have further gone through the order passed by the City Civil Court. I do not find any reason to interfere with the said order. Even the interest of the tenants are well protected in view of the observations made by the Trial Court in Para 22 and 23.

14. I am informed that in all 25 occupants have already vacated and only the appellants who are 10 in number are still occupying the premises. Considering the over all circumstances and the photographs placed on record by either side as well as the report of the T.A.C., I do not find any merit in this Appeal. The same is rejected.

15. At this stage learned counsel for the appellants prays that the ad-interim relief in operation be continued for further period of six weeks subject to their filing an undertaking in this Court stating that they will continue to occupy their respective premises in their possession at their own risk and will not hold

anybody including the Corporation responsible in the event of any mishap.

16. The undertaking is duly filed by the Appellants is taken on record and marked as 'X' for identification. The same is accepted.

17. Ad-interim relief granted to continue for further period of six weeks.

18. In view of the disposal of the Appeal, nothing survives for consideration in Civil Application. Civil Application is disposed of accordingly.

19. The parties to act on an authenticated copy of this order.

(M. S. KARNIK, J.)