

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

CIVIL APPLICATION NO. 1481 OF 2019

IN

WRIT PETITION NO. 8706 OF 2018

- | | | |
|--|---|----------------|
| 1 The Commissioner, Thane Municipal Corporation, Dr. Almeda Road, Chandanwadi, Pachpakdi, Thane (West) |] | |
| 2 The Deputy Commissioner, Naupada Prabhag Samiti, Thane Municipal Corporation |] | |
| 3 The Assistant Commissioner, Naupada Prabhag Samiti, Thane Municipal Corpn. |] | |
| 4 The Ward Officer, Naupada Prabhag Samiti Thane Municipal Corporation |] | ... Applicants |

In the matter between :

- | | | |
|--|---|--|
| 1 Jayantilal Dharmaji Sharma
Shop No.1, Khandu Niwas, Opp. Hariniwas Circle, L.B. Road, Thane (W) - 400 602 |] | |
| 2 Dalvi Auto Parts, Registered under the Indian Partnership Act, through its Partner, Manohar Raghunath Dalvi,
Shop No.2, Khandu Niwas, Opp. Hariniwas Circle, L.B. Road, Thane (W) - 400 602 |] | |
| 3 Ramesh Momaya Patel, Shop Nos.3, 6 & Godown No.1, Khandu Niwas, Opp. Hariniwas Circle, L.B. Road,
Thane (W) - 400 062. |] | |
| 4 Momaya Manji Patel, Shop Nos.4 & 5, Khandu Niwas, Opp. Hariniwas Circle, |] | |

- L.B. Road, Thane (W) - 400 602.]
- 5 Sakharam Ganpat Dalvi, Flat No.2,]
Khandu Niwas, Opp. Hariniwas Circle,]
L.B. Road, Thane (W) - 400 062]
- 6 Murji Ratansi Gada, Flat No.3, Khandu]
Niwas, Opp. Hariniwas Circle, L.B. Road,]
Thane (W) - 400 062.]
- 7 Hiren Murji Gada, Flat No.4, Khandu Niwas]
Opp. Hariniwas Circle, L.B. Road,]
Thane (W) - 400 602]
- 8 Ratilal Harakchand Shahm, Flat No.5,]
Khandu Niwas, Opp. Hariniwas Circle,]
L.B. Road, Thane (W) - 400 602.]
- 9 Tokarshi Gansi Jagani, Flat No.6, Khandu]
Niwas, Opp. Hariniwas Circle, L.B. Road,]
Thane (W) - 400 602]
- 10 Ketan Damji Shah, Flat No.8, Khandu]
Niwas, Opp. Hariniwas Circle, L.B. Road,]
Thane (W) - 400 602]
- 11 Damji Pasu Shah, Flat No.9, Khandu]
Niwas, Opp. Hariniwas Circle, L.B. Road,]
Thane (W) - 400 602]
- 12 Champaklal V. Cheda, Flat No.10, Khandu]
Niwas, Opp. Hariniwas Circle, L.B. Road,]
Thane (W) - 400 602]
- 13 Khushal Purshottam Makwana,]
Flat No. 11 & 12, Khandu Niwas,]
Opp. Hariniwas Circle, L.B. Road,]
Thane (W) - 400 602] ... Petitioners

Versus

- 1 The State of Maharashtra, Through]
its Principal Secretary, Urban and]
Town Development Department,]
Mantralaya, Mumbai]
- 2 The Commissioner, Thane Municipal]
Corporation, Dr. Almeda Road,]
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- 5 The Ward Officer, Naupada Prabhag]
Samiti, Thane Municipal Corporation]
- 6 Jitendra Sharad Bhoir, Age : 40 Yrs.,]
Occ: Business, Residing at: Bhoir]
House, Near Ashok Smruti CHS Ltd]
Kasarvadavali, Ghodbunder Road,]
Thane 400 607] ... Respondents

WITH
CIVIL APPLICATION NO. 891 OF 2019
IN
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Age-51 years, Occupation - Business]
Having address at - Shop No.1, Khandu]
Niwas, Opposite Hariniwas Circle,]
L.B. Road, Thane (W) - 400 602]
- 2 Ratilal Harakchand Shah, Age - 69 Years,]
Occupation - Retired, having address at]

Flat No.5, Khandu Niwas, Opp. Hariniwas
Circle, L.B. Road, Thane (W) - 400 602.]

3 Ketan Damji Shah,]
Age: 44 years, Occupation : Business]
having address at: Flat No.8, Khandu]
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Mr. R.S. Apte, senior advocate i/b Mandar Limaye the Applicants in CAW 1481 of 2019.

Mrs. Ashwini A. Purav, AGP, for the Respondent-State.

Mr. A.G. Damle, senior advocate with Mr. Ashok Gade i/b Mr. Jayesh Joshi for the petitioners in Writ Petition No. 8706 of 2018.

Mr. M.J. Bhat i/b Mukesh Sirsawal for the Applicants in CAW 891 of 2019.

**CORAM : S.C. DHARMADHIKARI &
G.S. PATEL, JJ.**

MONDAY, 01ST JULY, 2019

ORAL JUDGMENT : [Per S.C. Dharmadhikari, J]

1 This Civil Application has been placed before us urgently as the applicant - original respondent Nos.2 to 5 in Writ Petition No. 8706 of 2018 have highlighted the subsequent events. The original petition has been moved to challenge the notices issued by the applicants on 11th June, 2018 and 31st July, 2018.

2 We must make a brief reference to these notices as everything turns on their contents.

3 The prayer in the writ petition is to quash and set

aside these notices for they invoke sections 264 and 268(1) clause (c) of the Maharashtra Municipal Corporations Act, 1949. The thirteen petitioners before this Court say that they occupy the units in a building known as Khandu Niwas. That is the building in question. The occupants / owners / tenants of the building say that the same is constructed in the year 1975 by one Khandu Dharma Bhoir. After his demise, his heirs are recorded as owners in the property card of the building. The building may be forty years old, but, according to the petitioners, the owners of the building are keen on evicting them and that is how the attempts commenced in September, 2017. Though the petitioners assert that the repairs would suffice, neither they attempted to repair nor the owners were carrying out the repairs. The result is for everybody to see. The Municipal Commissioner and the Municipal officials directed the petitioners by a notice of 24th October, 2017, to have a structural audit of the building and submit a report within seven (7) days. The petitioners prayed for additional time and after they were in correspondence with the Municipal Corporation, they realised that the owners did not carry out any survey, though promised. The petitioners complain that even the Municipal Corporation did not carry out any

independent survey. A sudden notice of 11th June, 2018, was served and by which the petitioners were directed to demolish the building as it is in ruinous and dangerous condition.

4 Then, section 268(1)(c) of the Act was invoked and that is by issuance of a further notice of 31st July, 2018.

5 Before we proceed further it would be necessary to note the contents of these notices. The notices referred to the condition of the building. The notices highlighted that the building has suffered several cracks. The cracks are visible and they are on the walls. The notices also say that the beams are corroded and it would be highly unsafe to allow such a structure to stand for that would not only endanger the life of the occupants, but those passing by and residing in the neighbourhood.

6 We have found that on receipt of such notices relating to dangerous structures, invariably the dispute lands in this Court. Section 264 of the Act reads as under:

‘264 Removal of structures, etc., which are in ruins or likely to fall.- (1) *If it shall at any time appear to the Designated Officer that any structure (including under this expression, any building, wall, parapet, pavement, floor, steps, railings, door or window frames or shutters or roof, or other structure and anything affixed to or projecting from or resting on ,any building, wall, parapet or other structure) is in a ruinous condition or likely to fall, or in any way dangerous to any person occupying, resorting to or passing by such structure or any other structure or place in the neighbourhood thereof, the Designated Officer may, by written notice, require the owner or occupier of such structure to pull down, secure, remove or repair such structure or thing or do one or more of such things and to prevent all cause of danger therefrom.*

(2) *The Designated Officer may also, if he thinks fit, require the said owner or occupier by the said notice, either forthwith or before proceeding to pull down, secure, remove or repair the said structure or thing, to set up a proper and sufficient hoard or fence for the protection of passers-by and other persons, with a convenient platform and hand-rail if there be room enough for the same and the Designated Officer shall think the same desirable to serve as a footway for passengers outside of such hoard or fence.*

(3) *If it appears to the Designated Officer that the danger from a structure which is ruinous or about to fall is imminent, he may, before giving notice as aforesaid or before the period of notice expires, fence off, take down, secure or repair the*

said structure or take such steps or cause such work to be executed as may be required to arrest the danger.

(4) Any expenses incurred by the Designated Officer under sub-section (3) shall be paid by the owner or occupier of the structure.

(5) (a) Where the Designated Officer is of opinion whether on receipt of an application or otherwise that the only or the most convenient means by which the owner or occupier of a structure such as is referred to in sub-section (1) can pull down, secure, remove or repair such structure, is by entering any of the adjoining premises belonging to some other person the Designated Officer after giving such person a reasonable opportunity of stating any objection may, if no such objection is raised or if any objection which is raised appears to him invalid or insufficient, by an order in writing, authorise the said owner or occupier to enter such adjoining premises.

(b) Every such order bearing the signature of the Designated Officer shall be a sufficient, authority to the person in whose favour it is made, or to any agent or person employed by him for this purposes, after giving to the owner of the premises reasonable written notice of his intention so to do to enter upon the said premises with assistance and workmen, at any time between sunrise and sunset, and to execute the necessary work.

(c) In executing any work under this section as little damage as can be, shall be done to the adjoining owner's

property; and the owner or occupier of premises for the benefit of which the work is done, shall-

- (i) cause the work to be executed with the least practicable delay;*
- (ii) pay compensation to any person who sustains damage by the execution of the said work.”*

7 A perusal of the above section would indicate that its wording is more or less identical to Section 354 of the Mumbai Municipal Corporation Act, 1888. Recently, we had an occasion to discuss the parameters of writ jurisdiction and the powers of this Court under Article 226 of the Constitution of India to interfere with a subjective satisfaction or opinion of this nature. In a judgment authored by Hon’ble Mr. Justice G.S. Patel in *Mahendra Bhalchandra Shah & Ors. vs. MCGM & Ors (Writ Petition (L) No.1755 of 2019)*, the following has been observed :

“21 As the sub-section clearly shows, the rights of tenants and occupants are wholly unaffected by the operation of the Section 354. This is only logical. There is no warrant in law for the presumption that if a building is deliberately brought down by human intervention, this will somehow end all tenancy and occupancy rights, but that if the building collapses as a result of years of neglect, these rights are somehow preserved.

22 Indeed, we believe this to be the settled law in regard to demolition notices including under Section 354 of the MCGM Act. We are fortified in this view by the observations of a Division Bench of this Court in a decision rendered nearly half a century ago in *Diwanchand Gupta v NM Shah & Ors.* AIR 1972 Bom. 316, KK Desai and GN Vaidya, JJ. There, the Division Bench had four writ petitions against an order of the Chief Judge of the Small Causes Court. The litigation was in respect of a notice of 1965 under Section 354 of the MCGM Act 1888 served on owners of a ground and two floor tenanted building at Clive Road, Danabunder requiring them to pull the whole structure down to plinth level. The tenants of course resisted. One of their arguments before the Small Causes Court was that the demolition order was wholly unnecessary, and that the entire situation had been contrived by the owners to get rid of the tenants — precisely the apprehension Mr Damani voices five decades later. Considering the provisions of the MCGM Act and particularly Sections 354 to 507, and an earlier Division Bench decision of this Court in *Nathubhai Dhulaji v Municipal Corporation*, AIR 1959 Bom 332, [per YV Dixit & VM Tarkunde, JJ.] the *Diwanchand Gupta* court found no substance in the opposition to the notice. It said that that all that the authority had to do was to act bona fide and not capriciously or with an improper motive. But if the authority considered the facts objectively, honestly and bona fide, that authority's satisfaction would not be open to challenge. As *Nathubhai Dhulaji* said, whether or not a building should be repaired or pulled down is a matter of which the authority was the sole judge. So long as the empowered agency confined himself to

the limits of the statutory power conferred by Section 354, the discretion in that section did not lend itself to interference. The Diwanchand Gupta Division Bench said it was bound by the previous decision in Nathubhai Dhulaji. So are we. For, as the Division Bench observed in Diwanchand Gupta, the satisfaction on facts is that of the authorized officer under Section 354. It is not open to the Court (or any other authority), unless empowered by law to sit in judgment over that satisfaction, i.e. to substitute that opinion with its own. For, the power conferred under Section 354 is a power manifestly in the public interest. It is also a reasonable restriction on the right to carry on trade or business within the meaning of Article 19(1)(g) read with Article 19(6) of the Constitution, since the latter empowers the State to make any law imposing, in the interests of the general public, reasonable restrictions. It is never for the Court to satisfy itself whether the building was in a dangerous condition when the notice was issued. Thus, absent a clear demonstration of abuse of discretion, mala fides, caprice or perversity, a Court will not interfere to set aside such a notice. It is not done for the asking. It is certainly not done because an alternative view may be possible, or is one that some occupants find more palatable. It is, therefore, never for a court to decide whether a building is actually so ruinous as to require its demolition.

23 *We believe we would do well to remind ourselves, and parties who petition us, of the half-century of wisdom in Diwanchand Gupta. It has stood the test of time. We ignore its words at our peril. Here, too, we are being asked in exercise of our discretion under Article 226 of the Constitution of*

India to decide whether the building is truly ruinous.

24 Equally therefore, any apprehensions that the Petitioners' 'rights' in the property will somehow be obliterated along with the building's demolition are without basis. The same apprehension was expressed in Diwanchand Gupta. Nearly 50 years ago, the same argument was found to be without merit. Five decades have lent it no heft. It is still without merit.

25 Therefore, the remedies of such tenants or occupants vis-à-vis their tenancies or occupancies lie elsewhere. In any case, it should be evident that continuing in occupation of a ruinous and dangerous building does nothing at all to safeguard those rights. In saying this, we are mindful of the distinction drawn by the Supreme Court in Vannattankandy Ibrayi v Kunhabdulla Hajee (2001) 1 SCC 564 : AIR 2003 SC 4453; (That Section 108(b)(e) applies to leases of land is well settled: see Raja Dhruv Chand v Raja Harmohinder Singh, AIR 1968 SC 1024, in the context of the extinguishing of a tenancy.) Noticing Section 108(B)(e) of the Transfer of Property Act, 1882, the Supreme Court held that provision, which give the lessee the option of voiding the lease in the event the premises are destroyed by natural calamity, would have no application where built premises are fully controlled by a complete rent control legislation. In fact, we find the decision in Ibrayi supports our view. In that case, the structure in which the tenanted premises existed (a shop) was destroyed by fire. Claiming that the tenancy continued even though the premises no longer existed, the erstwhile

tenant constructed a new shop on the now-empty land without the landlord's permission. The Supreme Court held that this could not be done. The local rent control legislation fully occupied the field. It was a self-contained code. There was no scope for invoking Section 108(B)(e) of the Transfer of Property Act. The word tenancy could not be held to mean that the tenant would be entitled to squat on open land in expectation of occupying any new structure put up by the landlord. However, it is an entirely different situation where a landlord himself pulls down a building governed by the State Rent Act. In our case, resort may be had in such a situation to Section 19, 20 and 21 of the Maharashtra Rent Control Act, 1999. In any case, Section 354(5), quoted above, makes specific provision to save tenancy rights in the case of demolition.

26 The Petitioners' argument also entirely overlooks the 28th February 2018 decision of AS Oka J (as he then was) and RI Chagla J in MCGM v State, mentioned earlier. That final judgment set out in great detail the various statutory provisions of the MCGM Act as also the corresponding provisions of the Maharashtra Municipal Corporations Act, 1949. We are in entire agreement with the findings returned by the Division Bench on 28th February 2018. The Division Bench referred to the Supreme Court decision in Makarand Dattatreya Sugavkar v. Municipal Corporation of Greater Mumbai, (2013) 9 SCC 136 and relied on paragraphs 19 and 20 of the Supreme Court decision. We, too, draw support from paragraph 20 of the Supreme Court decision that the Division Bench quoted: the primary object of Section 354 is to protect

the public at large and passers-by from the danger posed by buildings in so ruinous a state. It is not the prerogative, but the statutory duty of the Corporation to implement a Section 354 notice in letter and spirit. That duty is in the nature of a public law obligation. In a given case, the Court can compel it. As the Division Bench in MCGM v State noted, this element of public duty cast on officials by Section 354 has been repeatedly emphasized by this Court, (MCGM v State, paragraphs 18-20, supra. See also: Tadeshwar Wadi Co-operative Housing Society Ltd v State of Maharashtra & Ors, 2013 (2) Mh LJ 681.)

27 *We turn now to some other facets of what has virtually become a ‘dilapidated building jurisprudence’, at least in this Court.*

28 *First, there is the matter of occupants offering to give an ‘undertaking’. We are conscious that this approach has gained much currency, especially in the last few years. It is now more or less routine for lawyers to blithely offer on behalf of their clients an ‘undertaking to continue in occupation at their own risk’. Mr Damani says so too. We find this unacceptable on facts. These tenants/occupants, paying paltry or no rent, have so far paid next to nothing towards maintenance of the structure that they occupy. We must notice Section 14 of the Maharashtra Rent Control Act, 1999:*

14. Landlords’ duty to keep premises in good repair.

(1) Notwithstanding anything contained in any law for

the time being in force and in the absence of an agreement to the contrary by the tenant, every landlord shall be bound to keep the premises in good and tenantable repair.

(2) If the landlord neglects to make any repairs, which he is bound to make under sub-section (1), within a reasonable time after a notice of fifteen days is served upon him by post or in any other manner by a tenant or jointly by tenants interested in such repairs, such tenant or tenants may themselves make the same and deduct the expenses of such repairs from the rent or otherwise recover them from the landlord:

Provided that, where the repairs are jointly made by the tenants the amount to be deducted or recovered with interest by each tenant shall bear the same proportion as the rent payable by him in respect of his premises bears to the total amount of the expenses incurred for such repairs together with simple interest at fifteen per cent per annum on such amount:

Provided further that, the amount so deducted or recoverable in any year shall not exceed one-fourth of the rent payable by the tenant for that year.

(3) For the purposes of calculating the expenses of the repairs made under sub-section (2), the accounts together with the vouchers maintained by the tenants

shall be conclusive evidence of such expenditure and shall be binding on the landlord.

(Emphasis added)

There is absolutely nothing presented to us to indicate that the Petitioners ever resorted to Section 14(2). It is not as if the building suddenly became so ruinous overnight. The process had to be gradual, spanning decades. In all that time, not one of these occupants or tenants have once cared to take any steps to maintain the structure. Section 14 of the Rent Act casts a duty on a property owner to maintain the premises in tenantable repair. But it also gives tenants the right to force those repairs should the landlord be recalcitrant. These tenants have done nothing. Their own report shows that extensive repairs are, even according to them, necessary. They only say that there is no need to tear down the building. They do not say the building is in such mint condition that it needs no repairs at all. Indeed, our experience is that when tenants are asked to contribute essential repairs, these are resisted and it is only when the building is so completely dilapidated that there is no option but to have it evacuated, pull down and reconstructed that such offers of volunteering to pay for repairs come to be made.

29 *We do not accept that there is any warrant or support for this ‘undertaking jurisprudence’. After all, what is the nature of such an undertaking? What is its value? Typically, the undertaking is worded to say the occupants will continue in occupation at their own risk; that they will not hold anyone*

liable if there is a calamity; and that they agree to be liable for any losses to life or property of third parties including passers-by. We fail to see the value of such an undertaking. If it is meant or conceived to be in form of some sort of generalized, non-specific indemnity, then it is utterly useless. Should there be a mishap to the person giving the undertaking, perhaps even a loss of life, then that undertaking, no matter what its verbiage and legalese, serves no purpose at all. In that situation, it can never be enforced. To put it pithily, when the ‘undertaker’ meets his maker, he is beyond the reach of the law. Therefore, in our view, the practice of permitting persons to continue in occupation on the basis of such undertakings has no warrant in law. In fact, it is contrary to the specific mandate of the law. These “undertakings”, in the form noted earlier, may hold none responsible, but does that absolve the public body from the loss caused to a third party (an innocent passer-by or one residing in the neighbourhood), or give the public body complete and total immunity from all legal proceedings or the consequences of any verdict rendered therein? The answer is obviously no. It is extremely doubtful whether it can be urged that an undertaking of this nature described above, even if filed in and accepted by the Court, releases the MMC from the statutory obligation and duty it owes to the public at large.

3C *To our mind, the principle, succinctly summarised in York Corporation v Henry Leetham & Sons Ltd, [1924] 1 Ch 557 a decision of the Chancery Court summarised below, fully applies to the present position of the MMC. In the case before*

the Chancery Division, York Corporation was by statute entrusted with the control and management of the Rivers Ouse and Foss in Yorkshire. It could charge tolls, within limits, as it deemed necessary to carry on the two navigations in which the public had an indubitable interest. In 1888, the corporation entered into two agreements with the firm of Henry Leetham & Sons. These allowed the firm and its successors and assigns to transport cargo on the River Ouse for a monthly fee in place of authorised dues and charges, with an agreement for a refund to the firm of the difference between the annual fee and the ordinary charges. The River Foss agreement was one by which the firm covenanted to pay the corporation £200 per annum for 20 years as a composition for the ordinary tolls, in exchange for free use of that waterway. York Corporation sued for a declaration that the two agreements were illegal and invalid being ultra vires. The Chancery Court held for the corporation, saying that:

no matter what emergency might arise, it had disabled itself from exercising its statutory powers ...

Disposing of the witness action before him, Russell J held that no body charged with statutory powers for public purposes may divest itself of such powers or fetter itself in the use of such powers. He said:

As I have already indicated, the plaintiffs are invested with statutory powers of charging such tolls, within limits, as they may deem necessary for the purpose of carrying on these two undertakings in which the public

are interested. The effect of these two agreements is that they bind themselves for a period, the duration of which depends upon the volition of the defendants, not to exercise those powers as against them. No matter what emergency may arise during the currency of the agreements the Corporation have deprived themselves of the power to charge the defendants such increased tolls as might enable them to cope with the emergency. They have for so long a time as the defendants desire to that extent wiped out or fettered their statutory power. If that be, as I think it is, the effect of these agreements, they are, in my opinion, agreements which are ultra vires the Corporation.

31 *The second aspect is the trend of making an order directing parties to 'maintain the status quo'. This is effectively what is sought even in this writ petition when the petitioners seek from us a writ commanding the restoration of power and water supply and a restraint against the forced demolition of the structure. In the case of a building subjected to a Section 354 notice we do not even pretend to understand what, if anything, an order of 'status quo' (whatever the wording) is supposed to mean. Is it that the building should continue to degrade and become more ruinous? Or is that that occupants should continue to be a hazard to themselves or others or both, contrary to the public law mandate of the statute? Or is it supposed to be some final determination that the building is not, in fact, so structurally damaged as to warrant its being pulled down? If so, then that is a final*

determination – and one that weight of precedent says is clearly impermissible – and cannot constitute an interim or ad interim order.

32 We do not suggest that in no case can an order of status quo ever be made. But it is our considered view that an order of status quo can be passed only in circumstances that are so sufficiently precise that both sides and the Court encounter no ambiguity about the state of affairs that are ordered to be retained as-is. In *Kishore Kumar Khaitan & Anr. V Praveen Kumar Singh* (2006) 3 SCC 312, the Supreme Court said it was not proper to order a status quo (there, in respect of premises) without indicating what the status quo was. The expression 'status quo' means 'the existing state of affairs'; 'the situation that currently exists'; *Black's Law Dictionary*, 7th Edition, or to keep things as they presently are. It is the nominative form of the prepositional Latin phrase, *in statu quo*, literally 'in the state in which'. In the case of a dilapidated building, a generalized order of status quo without reference to a specific or known state of affairs only means that the building should be allowed to continue to deteriorate further, and that persons are allowed to continue to occupy the building that has been found to be dangerous not only to themselves but to the general public. Such an order of status quo itself poses and carries a risk not only to the occupants themselves but also to others who are not connected with the present litigation at hand. That stripe of generalized, non-specific status quo order in Section 354 cases is contrary to law, to statute, to precedent, and even logic: there can be no status quo preventing the monsoon, for

instance, or any other force of nature, nor will it operate to prevent continuing structural degradation over time. Such a non-specific order of status quo is therefore entirely impermissible. If necessary, a court will decide the case finally there and then at the stage of admission (as we have this one).

33 *It is now clear that a Court is not permitted or even capable of determining whether a building is truly so ruinous as to warrant its demolition. We do not assess the structural condition of the building (and the chawl in question is very much a 'building'), or its structural vulnerability. We only assess the vulnerability in law of demolition notices or the TAC recommendation or order. In other words, we address ourselves not to the decision itself, but to the process by which it was reached. We do not suggest that the mere age of a structure invariably and unquestionably means that it is 'ruinous' or dilapidated. By that reasoning, the High Court building, which is 150 years old, or other heritage structures such as CST railway station or the Mumbai University's Fort campus would all be deemed to be in imminent danger of collapse. They are not. But even these buildings, like all built structures, require periodic and timely intervention for their preservation and upmeans that it is 'ruinous' or dilapidated. By that reasoning, the High Court building, which is 150 years old, or other heritage structures such as CST railway station or the Mumbai University's Fort campus would all be deemed to be in imminent danger of collapse. They are not. But even these buildings, like all built structures, require periodic and timely intervention for their preservation and*

upkeep. There are several buildings in the Island City that have been well-maintained for decades, or have been restored and do not pose a danger. Should any of these buildings, in demonstrably good condition, be subjected to such a demolition notice, a Court will have no hesitation in concluding that the decision is perverse. But that perversity has to be shown. It is not to be assumed. Therefore, when there is material available to show deterioration, and the lack of timely and periodic maintenance and repairs over time, the writ Court will be slow to interfere without clear demonstration and proof of mala fides, arbitrariness and perversity.

34 *** *** ***

35 *Lastly, we reiterate that it is not in every case that the intervention of the Court can be sought. Unless a Petition makes out sufficient cause for interference on one or more of the grounds that we have indicated earlier in this order, in our view a High Court is not entitled to intervene in exercise of its limited jurisdiction under Article 226 of the Constitution of India. To put it differently, in exercise of this limited jurisdiction the High Court cannot substitute its view for the technical view of the members of the TAC. It is only where that TAC is clearly demonstrated to have acted arbitrarily, mala fide, or in a manner that is can fairly said to be perverse i.e. by passing an order that is implausible or one that no reasonable or rational person could ever take, that this Court will intervene.*
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8 The tests are too well settled, but require reiteration. Again and again this Court has been approached and persuaded to pass orders allowing occupants like the petitioners to reside in, the structures which are already termed as dangerous or in ruinous condition, at their risk. The orders recite that at the request of the occupants and at their risk and subject to an undertaking given by them, these state of affairs would continue.

9 When this petition was filed, the Court was persuaded on 6th August, 2018, to pass the following order:

“ *Not on board. Taken on board.*

1 *Heard the learned senior counsel appearing for the petitioners. Place the petition on production matter board on next Monday i.e. 13th August 2018. Till the next date, the impugned notice shall not be acted upon subject to condition*

of the petitioners filing in this Court an undertakings on oath stating that they will continue to occupy the premises in their possession at their own risk and in the event of fall of the building or any part thereof, they shall be solely responsible for the damage or loss which may be caused to any third parties. Such undertakings shall be filed by next Monday.”

10 The Court had on record, an affidavit-in-reply after this order and affirmed on 13th of December, 2018. In this affidavit it has been stated by the Corporation / respondents that the petitioners have relied upon a report dated 2nd August, 2018, in support of their case that the building can be repaired and, therefore, there is no need to demolish it. The conclusion in the report indicates that columns, beams and slabs of the structure are damaged at various places internally as well as externally and the damage is of a major nature. The petitioners may have filed an undertaking and in terms of the order passed by this Court. However, in paragraph 5 of this affidavit it has been stated that this building is situate in the heart of Thane City. The building is at a junction where lots of vehicles ply during the day as well as in the night. The deponent very clearly says that it is easy for the petitioners to say that they will take the

responsibility of any damage for the loss which may be caused to third party in the event the building collapses, but this Court ought to have insisted on some amount being deposited for every such building and which is termed as dangerous or in ruinous condition is likely to collapse. It will present enormous challenges and difficulties for the Municipal Corporation. All the more when there are interim orders staying the demolition. In the event building collapses and if it is located at such junction, then, there will not only be a traffic jam, but traffic from the internal roads and proceeding towards other parts of the City gets affected. During the pendency of this petition, a well known Institute in the field of structural engineering carried out a structural audit. The Veermata Jeejabai Technical Institute carried out that audit on 21st October, 2018 and it submitted its report on 22nd November, 2018, to the Corporation. The report indicates that the repairs, strengthening and retrofitting of the structure will not be technoeconomically feasible and, therefore, recommend the reconstruction of the building. The report also indicates that the visual inspection and also the tests carried out reveal that the concrete of RCC beams and columns have deteriorated. Now, the concrete at site is not of a satisfactory quality. It is in these

circumstances that the petitioners were served with the initial notice and backed by the opinion of the Expert body, the further notice. The petitioners have applied for carrying out repairs, but the Municipal Corporation has taken no decision on this application and for obvious reasons. A structural audit had to be carried out in the interest of not only the persons occupying the structure or claiming rights therein, but in the interest of the residents of the City. They commute everyday and have to pass by this old, dilapidated structure, either in their vehicles or as pedestrians. It is in these circumstances that the Municipal Corporation was anxious that such orders as are presently passed, ought to be vacated.

11 Now, the Civil Application No. 1481 of 2019 has been moved by the Municipal Corporation to seek recall of the interim order on account of the subsequent events. These subsequent events are that the structure has partly collapsed. It is elaborated in paragraphs 3 and 4 as under :

“3 The Applicants submit that this Hon’ble Court on 6 August 2018 had granted stay to the impugned notices subject to condition that the Petitioners would file an undertaking in this Hon’ble Court stating that they would

continue to occupy at their own risk and in event of fall of the building or any part thereof they shall be solely responsible for the damage or loss which may be caused to third parties. The Applicants submit that the Petitioners have filed an Undertaking dated 11 August 2018 as per the directions of this Hon'ble Court dated 6 August 2018. The Applicants submit that the interim orders thereafter have been continued by this Hon'ble Court vide order dated 13/08/2018, 14/09/2018, 06/12/2018, 13/12/2018, 09/01/2018, 07/02/2019, 12/03/2019 and 11/04/2019. The Applicants submits that the CMIS date of the above Writ Petition is 26 November 2019.

4 *The Applicants submit that on 20 June 2019, the ceiling of the third floor collapsed. The Applicants carried out the inspection on the very same day and they found that the ceiling of the third floor had collapsed and hence a Panchanama was drawn to that effect. The Applicants submit that the legal department of the Applicants thereafter communicated this aspect to their lawyer telephonically on 21 June 2019 at around 12:30 p.m. The Applicants submit that it was requested to the lawyer to mention the aforesaid aspect to the Hon'ble Court and ask for immediate circulation for grant of urgent reliefs. The Applicants submit that immediately an officer was deputed with necessary papers and photographs indicating the precarious condition of the building. The Applicants submit that the matter was mentioned at around 3:30 p.m., thereby requesting the Hon'ble Court to place the matter immediately for production and/or for circulation on Monday i.e. 24 June 2019. The*

Applicants submit that the Hon'ble Division Bench was pleased to place the matter at 5:00 p.m., and directed us to serve a Notice to the Advocate for the Petitioner. Hereto annexed and marked as Exhibit-A (colly) is a copy of the Panchanama and photographs."

12 This Civil Application highlights that in all there are thirteen residents and five commercial units. Out of the thirteen residential premises in the building, seven are vacant and the remaining six are still occupied. Out of the five commercial premises on the ground floor, all are occupied. The subsequent event of collapse of the ceiling of the third floor and the conclusion of the VJTI is relied upon to seek immediate setting aside or recalling of the interim order. It is claimed that in public interest, now the impugned notices should be allowed to be taken to their logical conclusion.

13 When such a Civil Application was moved before us, we immediately placed the matter on Board. With the consent of both sides, we have taken up the writ petition itself and heard it.

14 Mr. Damle, learned senior counsel appearing for the

petitioners would seek time to respond to the Civil Application and in details. He would submit that though a reply is given to this Civil Application, still, some documents would have to be relied upon. The reply is by one Ramesh Momaya Patel. He is carrying on business from shop Nos.3 and 6. He files this reply on behalf of the petitioner Nos.3 and 4. He denies that the ceiling of the third floor collapsed on 20th June, 2019. He also denies that inspection on the very same day was carried out and Panchanama was drawn. He says that it is significant to mention that the plaster of the ceiling of a flat belonging to one Sunil Thakur collapsed three years earlier and not on 20th June, 2019. The said premises are not in use since more than twelve years. Neither the occupant Sunil Thakur nor his family members or any other claiming through him, reside there any more. The condition of that flat is bad due to non maintenance of the same. This does not mean that the entire building is in a precarious condition. He relies upon an affidavit filed and affirmed by all occupants of the building Khandu Niwas.

15 It is, therefore, alleged that the Panchanama drawn and stated to be of the site, is signed by interested persons. Out of

the two Panchas one is Sunil Thakur himself and the second is Ataullah Samiullah Shaikh who is a contractor on the panel of the Thane Municipal Corporation.

16 Mr. Damle, therefore, maintains that it is at the behest of the owner of this Khandu Niwas that the impugned notices have been issued and he has obvious interest in seeking eviction of the occupants in this manner. The argument is that the Municipal Corporation and its machinery has been utilised to evict the tenants. It is submitted that there is an elaborate procedure both in the Rent Control Legislation if the same applies to the premises or in the general law to seek eviction of the occupants in the event a structure or building inhabiting them is in a dangerous or ruinous condition and is likely to fall. The landlords / owners can seek eviction of the tenants on this ground. Even in general law, such a proceeding can be instituted. However, what is prohibited directly cannot be permitted to be achieved indirectly and that is precisely the reason why we should quash the notices.

17 Mr. Apte, learned senior counsel appearing for the

respondents maintains that there is absolutely no material on record which would vitiate the subjective satisfaction of the Municipal Corporation arrived at through its delegate. Secondly, this Court cannot interfere with the notices merely because there are conflicting expert opinions. Thirdly, even after the interim order of this Court in the present petition, attempts were made by the Municipal Corporation to obtain a report and to assist the occupants in the event the building is in a repairable condition. However, we must give due regard to the opinion of the experts in the field and VJTI is one such expert. The Municipal Corporation cannot, therefore, be put to test as far as its subjective satisfaction by later on obtaining reports. It is only because of an interim order of this Court that the Municipal Commissioner and the officials could not take the notice to the logical conclusion. Meaning thereby, the building could not be brought down. Now, it has collapsed partially and continuing the interim order would be disastrous.

18 After we have perused the petition and all the annexures thereto, so also the Civil Application and the reply affidavit, we are of the firm opinion that this interim order

deserves to be vacated. It is time we lay down and reiterate the principles which we have already laid down in the judgment in *Mahendra Blanchandra Shah* relating to similar notices and impugned by occupants. One curious thing and that has come on record of this case is an application of 12th March, 2019. That is much after the filing of the petition and much after the interim order. Pertinently, this is an application by petitioner No.1, petitioner No.8, petitioner No.10, petitioner No.11 and petitioner No.13. In that application it is stated that the condition of Khandu Niwas building is such that the applicants find it practical and pragmatic to change their earlier stand. They are now interested in a welfare oriented approach. They desire to find a workable solution for the safety of the occupants of the building. They say that it will be desirable and practical to demolish this building and pave way for reconstruction / redevelopment thereof. Therefore, they seek their transposition as respondents. They no longer support the assertions in the writ petition.

19 As is usual in all these matters, the arguments are that the developers / owners and landlords win over such persons

during the pendency of legal proceedings. That is how they seek to withdraw or break away. We should not, therefore, give any weightage to such applications is the submission.

20 However, we find that the subsequent developments in this case are not capable of being ignored. Precisely that is what is highlighted in the *Mahendra Bhalchandra Shah* judgment recently delivered by us. That such buildings may not immediately collapse or may not pose a threat to the life of the occupants, but vulnerable as these structures are, the occupants thereof must consider themselves lucky. If they continue to occupy such buildings, they endanger the life and safety of others and our interim orders do not give them a right to do so. Their undertakings mean nothing, for the general public is not going to say that the Municipal Corporation is not guilty of neglecting its duty so it should not be sued in any court of law in the event the building collapses and takes the life of innocent passers-by or those in the neighbourhood. Despite such undertakings given to this Court, the Municipal Corporation is obliged to perform its statutory duties and functions. The plain duty and obligation is to ensure that dangerous structures which are in ruinous state or

likely to fall down are removed if they are in the Municipal limits. They have to be identified periodically and the Municipal Corporation is obliged to take steps for their demolition and removal. No principle of law would absolve the Municipal Corporation from this obligation and duty which flows from a statute. Secondly, the Municipal Corporation cannot be directed to consider the plight of the occupants for they are left allegedly in the lurch by owners and landlords. We believe that they are never left in such lurch. The relationship between the landlord and tenants, if governed by the Rent Control legislation, that itself contains elaborate provisions enabling the tenants to carry out repairs and to maintain the structure or building which is occupied by them. They can recover the expenses, charges and costs of such repairs and maintenance from the landlord / owner of the building. In the event the Rent Control legislation is inapplicable, the general law provides sufficient safeguards and merely because there is no provision as specific as sub-section (5) of section 354 of the Mumbai Municipal Corporation Act, 1888 does not mean that all legal rights of the occupants and tenants are in jeopardy or can never be enforced by approaching a competent court.

21 If this is the conclusion that we have reached and by elaborate reasoning, we do not think that we should take a different view in this matter.

22 Apart from that we find that the subjective satisfaction reached by the respondents is on definite material. It is not a mere *ipse dixit*. It is not vitiated by arbitrariness or perversity. One cannot say that no reasonable man placed in the position of a Municipal Engineer or Commissioner will not arrive at the satisfaction or opinion or will not conclude that which is set out in the impugned notice. Rather, there are materials preceding the notice and subsequent thereto placed on record which indicate that the subjective satisfaction does not suffer from arbitrariness or perversity, leave alone *mala fides*.

23 A bald and vague assertion that the owner or landlord always desires to bring down a old structure and, therefore, can influence the opinion of the Municipal Corporation, would not suffice. If that was possible, the Municipal Corporation's decision to invite VJTI to inspect the building and carry out the structural

audit would also have been influenced by the landlord/owner. If they are so influential, merely because they are rich and powerful, then, possibly every person could have been won over by them. This is not even the case of the petitioners for they neither give any particulars nor name any officials, but make an oral submission.

24 On such unsubstantiated and vague oral pleas, we do not think that the interim order of 6th August, 2018, should be continued. The interim order is not based on any settled legal principles. In fact, the principles are to the contrary. Once we have agreed with the Corporation that this building is indeed dangerous and in a ruinous condition and likely to fall and subsequently parts of the same have collapsed, then, all the more we are not inclined to interfere in our writ jurisdiction.

25 As a result of the above discussion the writ petition fails. It is dismissed. The interim order shall stand vacated forthwith. Both the Civil Application Nos.1481 of 2019 and 891 of 2019 stand disposed of.

26 At this stage, Mr. Damle submits that though the occupants / petitioners give up their challenge particularly after our conclusion, time of three months may be granted to them to vacate the premises. These are occupants on the ground floor and some of them are carrying on business for decades together. Mr. Apte, learned senior counsel for the respondents opposes this request.

27 We have heard both sides on this limited point. We have found that we are in the middle of the rainy season. The downpour and to the extent of about 250 mm of rain in a single day precludes us from granting the request as is made by Mr. Damle. We think that alternate arrangements should be made as expeditiously as possible. We grant time till 15th July, 2019, to vacate the premises. We take it that all those making this request are themselves in possession and occupation of the premises and none have inducted any third party therein. It is only on this ground that we grant this time.

G.S. PATEL, J.

S.C. DHARMADHIKARI, J.