

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

**APPEAL FROM ORDER (ST.) NO.18623 OF 2019
WITH
CIVIL APPLICATION (ST.) NO.18624 OF 2019
WITH
CIVIL APPLICATION (ST.) NO.19000 OF 2019
IN
APPEAL FROM ORDER (ST.) NO.18623 OF 2019**

Jitendra Brahmaddutt Singh Thakur and Anr. ... Appellants

Versus

The Municipal Corporation of Greater
Mumbai and Ors.

... Respondents

.....

Shri P.K. Dhakephalkar, Senior Advocate a/w. Shri Pradeep J.
Thorat I/b. Shri Bipin J. Joshi for the
Appellants.

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

Shri P.S. Dani a/w. Ooril Panchal, Amit Mehta, Zain Mookhi,
S. Das I/b. Mahimtura and Co. for Respondent No.4.

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CORAM : M. S. KARNIK, J.

DATE : 9th JULY, 2019.

P. C.:

1. Heard learned Senior Counsel Shri Dhakephalkar
appearing on behalf of the appellants, learned Senior Counsel
Shri Reis appearing on behalf of the respondent-Corporation and
learned Senior Counsel Shri Dani appearing on behalf of
respondent No.4.

2. It is stated that the building in question is ground plus two storey structure. The appellant is the occupier of ground floor and the first floor where as the respondent No.4 who is the owner is the occupier of second floor.

3. The order under challenge in this Appeal is an order passed by the Judge, City Civil Court, Mumbai refusing to grant any ad-interim reliefs in the Notice of Motion filed by the appellants/plaintiffs.

4. Initially action was taken under Section 353-B of the Mumbai Municipal Corporation Act as the building was more than 30 years old. Instead of reproducing all the facts, suffice it to observe that pursuant to various reports of structural consultants, the Technical Advisory Committee ('T.A.C.' for short) on an earlier occasion by the report dated 10.09.2018 concluded that the building is in dilapidated condition and hence needs to be demolished. Against the order passed by the T.A.C. and the notice issued under Section 354 of the Mumbai Municipal Corporation Act, the appellants filed Writ Petition (Lodging) No.3226 of 2018 in this Court. The said Petition came to be disposed of on 04.10.2018 when the following order was passed :-

“ MINUTES OF THE ORDER :

1. The TAC (Technical Advisory Committee) Report dated 31.8.2018 and Notice under Section 354 dated 10.09.2018 are set aside.
2. The Respondent No.1 is directed to refer the matter to TAC and to furnish report afresh in accordance with the guidelines laid down in Writ Petition (L) No.1135 of 2014. The TAC may appoint any independent Structural Engineer for the purpose of conducting various tests as well as to give their decision on merits without being influenced by the Orders of this Honourable Court as well as report of the TAC dated 31.8.2018.
3. The Structural Audit Report dated 7 June 2018 of SIMCON Designers and Consultants Private Limited furnished by Respondent No.4 and Structural Audit Report dated 2 July 2018 furnished by Mr. Sameer Mhathe for the Petitioners will be also considered by the TAC.
4. All contentions of the parties are kept open.
5. The TAC shall within a period of 6 weeks from the date of this Order take visual inspection and within a period of 8 weeks from the date of this Order submit a Report to the B.M.C., Petitioners and Respondent No.4.
6. The Petitioners to occupy their respective premises at their risk and to tile the undertaking to that effect within one week.
7. Petition stands disposed of accordingly.
8. No order as to costs.”

5. Pursuant to the order passed by this Court the Corporation obtained report from Structwel Designers and Consultants who filed report dated 07.02.2019 classifying the building in the C-1 category. Based on this report the T.A.C. in the meeting held on 16.05.2019 came to the following conclusion :-

“ TAC Conclusion

On basis of the reports submitted by the Structural Auditors, the results of the Non-destructive testing & design analysis of the structure for the present condition, visual inspection carried out by the members of the TAC & proceedings of this meeting, it is unanimously decided by the T.A.C. that the structure known as Deep Mandir Theater situated at L.B.S. Road, Mulund (W), Mumbai is structurally deteriorated and is in dilapidated condition.

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

Designated Officer, ‘T’ ward shall therefore take necessary action as per the policy guidelines issued in this regards.”

6. This report of T.A.C is now challenged in the suit which is filed before City Civil Court, Mumbai. The Notice of

Motion was moved for appropriate interim orders. Against the refusal of ad-interim relief the present Appeal is filed.

7. Learned Senior Counsel Shri Dhakephalkar appearing on behalf of the appellants invited my attention to the findings of the T.A.C. Shri Dhakephalkar submitted that without hearing the structural consultants of the appellants the T.A.C. has proceeded to submit its report. My attention is invited to the policy guidelines which are made effective from 25.05.2018. He would invite my attention to the relevant clauses especially 1.02, 1.03, 1.04 and 1.05. It is one of the contention of Shri Dhakephalkar that the structural auditor's report of Structwel appointed by the Corporation was not supplied to the appellants structural consultant before T.A.C. took the decision. He submits that without copy of this report it was not possible for the consultants of the appellants to have presented the appellants case effectively. He would moreover submit that the communication dated 06.05.2019 of his structural consultant is very categoric. Though the structural consultant had asked the T.A.C. to proceed with meeting but the said communication has to be read as a

whole and not in isolation. In the second paragraph of the communication it is requested that the report conducted by Structwel on behalf of MCGM be given to the structural consultants so that he can be prepared for a fresh meeting. This according to him is sufficient to indicate that the structural consultant very much wanted to attend the meeting and present the case of the appellants. Shri Dhakephalkar would submit that the order passed by T.A.C. is in breach of the principles of natural justice and contrary to the guidelines of the Corporation. Shri Dhakephalkar would submit that this aspect was not considered by the learned Trial Court while refusing ad-interim relief.

8. Shri Reis learned Senior Counsel appearing on behalf of the Corporation relied on this Court's order dated 04.10.2018. He submitted that this Court had directed the T.A.C. to carry out the visual inspection. Accordingly visual inspection was carried out. The structural auditor had submitted a report. Based on the structural auditor's report and even the report as submitted by the appellants was taken into consideration by the T.A.C. Shri Reis would submit that the structural consultants of the appellants had given up his right to attend the meeting and in fact called upon

the T.A.C. to pass appropriate orders in the interest of justice citing his inability to attend the meeting. Shri Reis would submit that the structural auditors report of the appellants which was on record has been duly considered. In support of his submission he would rely upon the following decisions of this Court in **Mahendra Bhalchandra Shah and Others V. Municipal Corporation of Greater Bombay and Others in Writ Petition (L) No.1755 of 2019** and **Mr. Jayant Sunderdas Karia & Ors. Vs. The Municipal Corporation of Greater Bombay & Ors.** reported in **2017(5) ALL MR 271**.

9. He would submit that it is settled law that this Court in exercise of its jurisdiction would not sit in appeal for reviewing the merits of the structural audit reports. It is the job of experts. The opinion of the experts reached with regard to the condition of the building being subjective opinion, this court would not substitute its view, even if the opinion suffers from some errors here or there. The opinion of structural audit reports submitted by the tenants and the landlords if are conflicting in nature and, therefore, under the guidelines framed by this Court, the T.A.C. would look into and evaluate to decide regarding the

stability of the structure. It is for the T.A.C. to take appropriate decision as to whether the building is in repairable condition or not and whether the persons should continue to occupy such building. If it is in such a dangerous condition that it may collapse and cause loss of life and property, the T.A.C. evaluates the same and submits the report accordingly. Shri Reis would submit that appropriate opportunity was given to the appellants. He therefore submits that the T.A.C. report does not warrant any interference.

10. Shri Dani, learned Senior Counsel appearing on behalf of Respondent No.4 invited my attention to the communication dated 30.04.2019 of the structural consultant of the appellants which is at Page No.363 of the paper book. He would submit that by communication dated 06.05.2019 the structural consultants of the appellants asked the T.A.C. to proceed with the meeting even in his absence. According to him, now the appellant cannot go back and allege breach of principles of natural justice.

11. Heard learned counsel for the parties. The communication dated 06.05.2019 addressed by the structural

consultant to Corporation over which so many rival contentions are advanced reads thus :-

“ Thank you Sir,

For your information dated 6/5/2019 @ 16.58 about TAC Body meeting the next day i.e. 7/5/2019.

I Regret that I am on outstation technical visit with my responsible staff. However you may proceed with meeting to conclude Natural Justice towards cause and All parties concerned.

I had earlier attend TAC meeting and shall need copy of report conducted by Structwel on behalf of MCGM with load accesment and Pushover analysis as instructed then to be prepared for fresh meeting on the issue.

Hope my letter of Concern dated 30/4/2019 has reached you.

Samir J. Mhatre
Strc. Engg.”

12. Undoubtedly in second paragraph it appears that the structural consultant had asked the T.A.C. to proceed with the meeting. However in the third paragraph there is a reference in respect of the copy of the report conducted by Structwel on behalf of the M.C.G.M which the structural consultant of the appellants wanted. Further the communication would indicate that the

structural consultant could be prepared for the fresh meeting upon receipt of copy of this report.

13. It would also be pertinent to refer the policy guidelines as to the manner in which the T.A.C. is expected to proceed with the meeting. The relevant guidelines read thus :-

“1.03) On receipt of Structural audit report, the findings (Category) of the same shall be communicated to tenants/occupants by displaying it on the premise visible to all stating that occupants shall take care to safeguard the property by propping the building wherever necessary as suggested by Registered Structural Engineer.

1.04) If the tenant/occupants object to the findings of the audit report they shall be asked to appoint their own registered structural engineer & submit the structural audit report in Proforma -B within 30 days. However, this period can be extended by 15 days on receipt of request from tenant/occupier/owner/their structural Engineer. Otherwise process the same as per 1.07.

1.05) If the owners and/or the occupants submit conflicting structural audit report on the status of the building, the matter shall be referred to the concerned Technical Advisory Committee (T.A.C.) (Annexure-3) and decision of T.A.C. will be final and binding on all the parties concerned. The Technical Advisory Committee shall give hearing to concerned structural consultants during the meeting. As far as possible meetings of Technical Advisory Committee (T.A.C.) shall not be adjourned. For genuine reasons the meeting may be adjourned but in no case more than two adjournments shall be granted.

14. The reading of guideline 1.05 indicates that the T.A.C. shall give hearing to concerned structural consultants during the meeting. It further mentions that as far as possible meetings of the T.A.C. shall not be adjourned. Further for genuine reasons the

meeting may be adjourned but in no case more than two adjournments shall be granted.

15. No doubt the structural consultant in his communication dated 06.05.2019 had asked the T.A.C. to proceed with the meeting. The next portion of the communication clearly reveals that the structural consultant had asked for a copy of the report submitted by structural consultant of the Corporation upon receipt of which he could be prepared for the fresh meeting. In such circumstances, in my opinion, it would have been reasonable and in the interest of justice for the T.A.C. to have granted one opportunity of hearing to the structural consultant of the appellants.

16. The presence of the structural consultant at the meeting is not an empty formality as the guidelines itself indicate. Guideline 1.05 clearly provides that the T.A.C. shall give hearing to concerned structural consultants during the meeting. This as the decision of the T.A.C. has a drastic consequence of demolition of a building on the finding that the same is dilapidated and cannot be repaired.

17. This being the position, in my opinion, one opportunity needs to be given to the structural consultant of the appellants to appear in the meeting before T.A.C. so as to comply with Guideline 1.05.

18. In this view of the matter, instead of keeping this Appeal pending, I am of the opinion that the order passed by the T.A.C. needs to be set aside.

19. Shri Dhakephalkar, learned Senior Counsel submits that they are now in receipt of the report of Structwel Consultants. He undertakes that appellants structural consultant will remain present before the T.A.C. on 18.07.2019 at 11.30 a.m. and no further adjournment will be sought on any ground. The T.A.C. to hear the structural consultants and pass appropriate orders in accordance with law.

20. Shri Dhakephalkar states that in this view of the matter he would make an appropriate application to the Trial Court for withdrawal of the suit within a period of one week from today. Shri Dhakephalkar further states that the undertaking

given to this Court in terms of Paragraph 6 of the order dated 4.10.2018 shall continue.

21. The impugned order is set aside. The Appeal is allowed.

22. In view of the disposal of the Appeal from Order, nothing survive for consideration in Civil Applications. Civil Applications are disposed of accordingly.

(M. S. KARNIK, J.)