

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER STAMP NO. 21277 OF 2019
WITH
CIVIL APPLICATION STAMP NO. 21278 OF 2019

Shantilal Joshi and anr. .. Appellants

Vs.

Municipal Corporation of Greater Mumbai anr. .. Respondents

Mr.Jamsheed K.Master I/b Mr.Fauzdar P. Percy., for the Appellants.

Mrs.Madhuri More, for the MCGM.

CORAM : M.S.KARNIK, J.

DATE : 29th JULY, 2019

P.C. :

. I have heard learned Counsel for the appellants. Challenging the order passed by the City Civil Court, it is the contention of the learned Counsel for the appellants that on one hand, the trial Court has observed that the appellants do not have prima facie case and at the same time, Corporation is directed to supply the copy of the TAC report to plaintiffs. He

would submit that after the order is passed by the trial Court, the Corporation proceeded to demolish the suit building. He would invite my attention to communication dated 19/06/2019 addressed to the appellants directing them to submit revised structural audit report within 7 days. According to learned Counsel for the appellants this communication was received by the appellants only on 28/06/2019. Thereafter the appellants approached their structural auditor and vide report dated 13/07/2019 structural auditor submitted a report categorizing the building as C2A. Learned Counsel for the appellants would therefore submit that the building is repairable and not liable for demolition. He would further submit that in view of the conflicting reports, matter ought to have been referred to TAC. According to him, initially 'Total Solution' had filed the report in the year 2015 categorizing the building as C-2A category. Initially the report of 2015 was at the instance of the owners as well as tenants viz appellants. However, 'Total Solution' behind the back of the appellants, on 24/06/2019, accepted the position that the building in fact is of C-1 category. Learned

Counsel would therefore submit that the Corporation should have waited for the report of structural auditor of appellants before proceeding to demolish the suit building.

2. The trial Court proceeded on the basis of the report of the 'Total Solution' categorizing building as C-1 at a later stage. At the same time, the trial Court had directed the Corporation to supply copy of TAC report to the plaintiff. In the meantime, the Corporation has proceeded to demolish the building as according to the Corporation there was no stay in operation & building is in dilapidated condition.

3. On 26/07/2019 when the matter was mentioned out of turn, considering the urgency, I had directed the appellants not to enter the premises in their occupation without leave of the Court. Learned Counsel for the MCGM had then submitted that the building is partly demolished and building is in such a dilapidated condition that it may collapse at any time. Directions were therefore issued that till returnable date,

demolition not to proceed. Learned Counsel for the appellants submitted that despite the order passed by this Court, the Corporation went ahead with the demolition and now contending that the building is in dilapidated condition. Learned Counsel for the appellants submits that Contempt Petition Stamp No. 21450 of 2019 has been filed for breach of the order passed by this Court.

4. Be that as it may, report dated 29/07/2019 has now been filed by the Corporation stating that building is completely vacated. The details of the demolition as carried out before the order dated 26/07/2019 passed by this Court indicates that substantial portion of the building is demolished. Considering the observations in paragraphs 15 and further relevant portion of the said report which read thus :

“15. Due to the demolition of RCC Slab on 4th and 3rd floor the RCC Frame work of building is damaged and the stability is disturbed.

16. Due to the heavy rains the weight of the structures is drastically increased and RCC pores are filled up with water.

Due to change in temperature and change in volume of water droplets the cracks on RCC members may expand and result in sudden collapse of building without giving any signs.

17. Due to demolition debris is generated and accumulated on the 3rd floor which is very danger.

18. The rear side external columns are vertically splitted and may bring down the building to collapse causing major causality at any moment.

19. Due to such uncertainty, the building can be tilt in any direction and collapse without giving any intimation.

It is further submit here that on the south side of the structure a Gr+1 commercial structure use as hotel/banquet is situated which is hardly 10-15 fts. away from the notice structure which can get damaged and cause major causality if demolition is left incomplete. The building under reference is situated along the road which is very dangerous to passerby also.

It is to mentioned further here that the appellant removed all his articles from his shop no.1 except one cylindrical milk tank which is dead in use now and deliberately kept in shop to hamper the demolition action and harass the respondent” ;

it is not possible to extend the ad-interim relief already granted any further. The ad-interim relief granted therefore stands vacated.

5. It is the contention of the learned Counsel for the appellants that the demolition proceeded even during the operation of the stay granted by this Court. Consequently, Contempt Petition has already been filed. The Corporation may file reply to the Contempt Petition.

6. Learned Counsel for the appellants further submits that he may be granted leave to file appropriate proceedings against the Corporation for compensation. It is always open for the appellants to file appropriate Suit for damages or compensation against the Corporation, if at all the same is maintainable.

7. No useful purpose would now be served in interfering with the order passed by the trial Court and directing

the TAC to submit a report in view of subsequent development of Corporation having gone ahead with the demolition to a large extent. Moreover, it is only the appellants who are opposing the demolition. Appeal from Order is rejected.

8. Learned Counsel for the appellants makes a request to stay the demolition for 48 hours. Considering the report of the Corporation and the condition of the building, prayer made is rejected.

9. In view of disposal of the Appeal from Order, Civil Application does not survive and the same shall stand disposed of.

(M.S.KARNIK, J.)