

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11302 OF 2013

Suresh Khureja and Ors. } Petitioners
 versus
Kalyan Dombivli Municipal }
Corporation and Ors. } Respondents

Mr.S.G.Deshmukh with Mr.Ramdas A. Shelke for the
petitioners.

Mr.A.S.Rao for respondent nos. 1 to 3.

Ms.R.A.Salunkhe-AGP respondent no.4 (State).

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

DATED :- AUGUST 27, 2019

P.C. :-

1. By this writ petition under Article 226 of the Constitution of India, the petitioners are challenging the notice issued under section 264(1) and 268(7) of the Maharashtra Municipal Corporations Act, 1949. Prayer clauses (c), (d) and (e) of the petition reads as under:-

“c) To issue a writ of mandamus or any other appropriate writ or order or direction in that nature directing the Respondents to carry out structural audit in respect of the building popularly known as “Modern Guest House”, Opp. Chhaya Talkies, Murbad Road,

Kalyan by the Department of Infrastructure and Planning in Structural Engineering of the Veermata Jeejabai Technical Institute, H.R. Mahajani Marg, Mumbai-400 019;

d) To issue an order of injunction restraining the Respondents from evicting the Petitioners from their respective shops during the pendency of this Petition;

e) To issue directions to the Dean (Infrastructure & Planning) and Professor in Structural Engineering, V.J.T.I., H. R. Mahajani Marg, Mumbai-400 019 to carry out a proper structural audit of the building popularly known as “Modern Guest House”, Opp. Chhaya Talkies, Murbad Road, Kalyan, during the pendency of this Petition.”

2. On 21st December, 2015, this court passed an order in Writ Petition No.6198 of 2014, in which, the court recorded the consent (no-objection) of the Kalyan Dombivli Municipal Corporation to the petitioners carrying out repairs to the building in question under the supervision of the experts nominated by Veermata Jijabai Technical Institute (VJTI) at their own cost. The petitioners then satisfied this court by tendering an affidavit and in that affidavit, they made certain statements, which were accepted. However, a detailed proposal was to be forwarded for carrying out repairs at the site. For that, the writ petition was kept pending.

3. We have noted that from the order passed on 21st December, 2015 till date, beyond putting a report of two persons from the VJTI on record, there are no repairs carried out to the structure. The structure in relation to which notice has been issued by the Municipal Corporation is termed as being in ruinous condition and likely to fall. The Municipal Corporation has been repeatedly bringing to the notice of the occupants the status of the building/structure. It is indeed an old building. That building is found so deteriorated, according to the Municipal Corporation, that it will be completely unsafe for the occupants to reside. If it collapses, it will fall on the neighbours or portions of it may also take the lives of innocent passersby. It is with this anxiety that the Municipal Corporation issued a notice and to our mind, on a reading of the writ petition, its annexures and particularly the notice, there is no real challenge to the same. All that the petitioners say throughout is that from the year 2008, there is a ploy to evict them. The respondents have decided to construct a multiplex theatre, shopping arcade, marriage hall etc. in the Rukminibai Hospital Compound. They have decided to demolish the building of the petitioners popularly known as Modern Guest House. The action on the part of the respondents was an unilateral action without taking into confidence the petitioners. There were certain documents obtained by the petitioners, based

on which, they inferred the motives and designs of the respondents.

4. Now, the respondents to this writ petition are firstly the Kalyan Dombivli Municipal Corporation, secondly, the Deputy Commissioner (Estate), the Estate Manager of this Municipal Corporation and the State of Maharashtra. Who was to construct the multiplex theatre or the shopping arcade etc. is not clarified to us. It is possibly the inference drawn from the above that the notice is issued to further that design or plan. That appears to be the understanding of the petitioners insofar as the notice issued. Far from bearing this out, the notice recites that the building has completed more than 50 years and there is a danger of the same collapsing at any time. There is thus a clear notice to the petitioners, copy of which is at Exhibit 'C' to the petition. It says in very clearest terms that an audit of the structure was carried out and the structural auditor says that it is a dangerous structure. Thereafter followed the petitioners' reply and in the reply, all that the petitioners say is that the building was built in the year 1976. The building houses all the persons who started small businesses and it is not a 50 years old building, but a 37 years old building. The RCC structure of the building is perfectly in order and it is strong. It will last more than 30 to 40 years. In

other words, it will exist for many years to come. Then, the findings in the structural auditor's report are challenged.

5. The argument was that the building should be examined by real expert in the field like Civil Structural Department of VJTI, Mumbai or IIT Mumbai. That they are willing to co-operate with the same. Then, there is a complaint of increase of rent and that is termed as exorbitant. How that dispute was settled and attempts were made to evict the petitioners has been then set out in the reply to the notice.

6. What the affidavit in reply indicates is, today the position has worsened. There is nothing done beyond obtaining some report from the VJTI. The steps to carry out the suggested repairs have still not been taken. The notice is issued in the year 2013 and the report of the VJTI, recommending that the building can be repaired, is submitted in the year 2017, after which as well, two and half years have elapsed. We do not think that on the assertions in the writ petition, we can allow the petitioners to resist the notice in question. The report apart, we are on the satisfaction which has been reached before issuing the notice. That opinion or satisfaction is reached by the municipal authorities on an inspection of the building and which revealed to

them that it is unsafe for human occupation and that it is so unfit that it required a structural auditor to visit and carry out an audit of the same. That auditor has recommended that the building can be categorised as dangerous and imminently fit for being pulled down. That position has not changed for if it was to be brought in habitable conditions, extensive repair works were necessary. The repairing has not commenced though the order of 21st December, 2015 of this court permitted that course. The report of the VJTI is also on record of this petition.

7. To our mind, the notice, which is issued in the year 2013 cannot be kept in abeyance by intervention of this court on sketchy material. The recommendations of the VJTI would not carry the case of the petitioners any further, for the initial satisfaction is not vitiated by perversity or *mala fides*.

8. A cursory glance on the report of the VJTI enables us to conclude that the opinion of the Municipal Corporation that the building is in dangerous condition is not vitiated at all. In law, we cannot sustain the challenge to the notice by substituting our opinion with that of the Municipal Corporation. By relying upon some materials subsequent to the issuance of the notice, we cannot allow the structure to stand and in such a ruinous

condition. We do not think that any useful purpose will be served by allowing the petitioners to place an affidavit on record or to give them time to carry out any repairs, as recommended. To our mind, the structure has gone beyond repairs and therefore, this exercise in writ jurisdiction need not be resorted to at the instance of the present petitioners. The version of the petitioners is nothing but word against word. There are no real materials which would enable us to interfere with the notice in our jurisdiction under Article 226 of the Constitution of India.

9. At this stage, Mr Deshmukh for the Petitioners makes a startling submission. He says that in making such an order we would necessarily have to disbelieve the VJTI report. The submission is entirely regrettable. This Court does not address itself to reputation or the position of persons, howsoever high, but only to the contents of the materials before us. The history of this Court in fact shows that the highest of State functionaries have learned this lesson to their great cost and peril. Since Mr Deshmukh effectively invites this, we will consider that VJTI report briefly. We do so for the limited purpose of setting out its inherent and intrinsic inconsistencies and contradictions, and other shortcomings, all unexplained. The report itself is short, of only four pages. There are three pages of sketches showing

column locations, and then are very many pages of photographs. Such photographs do not impress us. They require no structural or engineering skill. They do add bulk, but little else. The trouble is on pages 2 and 3. The test results are plain. They are plainly stated. They say that the quality of the concrete observed in the Ultrasonic Pulse Velocity test, measured in km/sec, is 'doubtful'. It is almost entirely below 3 km/sec, the normative minimum by accepted standards. Then at page 3 it is stated that 'the RCC members seem to have the core intact'. We do not know on what basis this is said. The report does not indicate that any core sample was ever taken. This, in our limited understanding, requires drilling with a diamond-bit specialized drill and extracting a sample of the core, treating it to make it regular, and then subjecting it to pressure. The only observation is that the surface concrete is gone. How from this it can ever be concluded that the 'core is intact' is unexplained. How, given the velocity test results of doubtful quality, it is concluded that the building is structurally safe is also unexplained. But, as so often happens, the sting is in the tail. The report ends with this 'disclaimer':

Disclaimer:

The opinion expressed in this report is based on the experience and expertise of the personnel of this department and the department will not send its representatives for defending this opinion in any forum.

10. In other words, this report from VJTI (of whose reputation so much is sought to be made) is merely thrown into the records with no attempt made to defend it. The makers of the report have said they will not defend it. As far as we are concerned, even leaving aside the patent inconsistencies and lacunae (and there may well be more if the report is assessed by a true expert), a report that is not being defended, and is stated to be one that will not be defended, is a report that is all but orphaned or abandoned by its makers. We say nothing about the credentials of the authors but in our view it would be most injudicious to place the slightest shred of reliance on a report such as this.

11. We find no merit in the writ petition. It is, accordingly, dismissed. There would be no order as to costs.

(S.C.DHARMADHIKARI, J.)

(G.S.PATEL, J.)