

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 529 OF 2019
WITH
CIVIL APPLICATION NO. 604 OF 2019

Javed Qureshi and ors.

.. Appellants

Vs.

Municipal Corporation of Greater Mumbai and anr. Respondents

Mr.Rohan Sawant I/b Mr.Nitesh Acharya, for the Appellants.
Mrs. Madhuri More, for the MCGM.

CORAM : M.S.KARNIK, J.

DATE : 25th JULY, 2019

P.C. :

. Heard learned Counsel for the appellants and learned Counsel for the respondents. In this Appeal, the appellants who are the occupants of the building in question have assailed the order passed by the trial Court in the Notice of Motion refusing to stay effect, implementation and operation of the notice under Section 354 of the MMC Act. Learned Counsel for the appellants would submit that appellants had submitted a

report of their structural engineer viz. M/s.Stapati Designers & Consultants Pvt.Ltd. which reported that the building can be repaired and categorized the same as C-2-B category.

2. Learned Counsel would contend that though in the Technical Advisory Committee (for short 'TAC') report dated 20/07/2018, it is stated that M/s.Stapati Designers & Consultants Pvt.Ltd. were not present for the hearing, in the submission of the learned Counsel, no notice of hearing was given to M/s.Stapati Designers & Consultants Pvt.Ltd. As per the policy guidelines of the Corporation, structural engineers of the occupants are allowed to remain present before TAC. TAC proceeded to pass the impugned order based on the various reports.

3. I have gone through the order passed by the TAC. I had called upon learned Counsel for the Corporation to produce record showing intimation given to M/s.Stapati Designers & Consultants Pvt.Ltd. in respect of the hearing before TAC.

Learned Counsel for the Corporation on instructions would submit that they had informed M/s.Stapati Designers & Consultants Pvt.Ltd. by post. However, there is nothing on record to indicate that such a notice was in fact given to M/s.Stapati Designers & Consultants Pvt.Ltd. Though structural auditors M/s.Rexcon Con Cor Consultant Pvt.Ltd. & M/s.B.J.Mehta Architectural & Structural Consultant Pvt.Ltd. of the owners have categorized the building as C-1, there is conflicting report of M/s.Stapati Designers & Consultants Pvt.Ltd. which categorized the building as C-2-B.

4. In view of the guidelines, it is necessary to give an opportunity to the structural engineers of the appellants – occupants to remain present in the meeting & be heard by TAC.

In this view of the matter, I am inclined to set aside the order passed by TAC dated 20/07/2018.

5. The TAC to hold a fresh meeting on 01/08/2019.

Learned Counsel for the appellants undertakes that the structural consultant M/s.Stapati Designers & Consultants Pvt.Ltd. of appellants will remain present before TAC on 01/08/2019 and will not seek any adjournment.

6. Learned Counsel for the appellants states that this will be treated as good intimation to M/s.Stapati Designers & Consultants Pvt.Ltd. to remain present before TAC on 01/08/2019.

7. TAC to consider the matter as per policy guidelines and take a fresh decision in accordance with law after hearing structural consultant M/s.Stapati Designers & Consultants Pvt.Ltd.

8. The order passed by the trial Court is set aside. Appeal is allowed.

9. Learned Counsel for the appellants states that he will

take steps to withdraw the Suit before the trial Court within one week from today.

10. Electricity and water connection of the building be restored forthwith.

11. It is made clear that the appellants- occupants will be occupying the suit premises on their own risk and will not hold anyone responsible in case of any mishap. The appellants accept this position.

(M.S.KARNIK, J.)