

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

**APPEAL FROM ORDER (ST.) NO.25086 OF 2019
WITH
INTERIM APPLICATION NO.1 OF 2019**

Mr. Anil Agrawal	...	Appellant
Versus		
The Municipal Corporation of Greater Mumbai And Others	...	Respondents

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Mr. P.J. Thorat a/w Mr. P. B. Joshi i/b Mr. Bipin J. Joshi for the Appellant.

Ms. Madhuri More for Respondent Nos.1 and 2-MCGM.

Mr. Nilesh Gala i/b Law Square for Respondent No.4.

Mr. Mayur Khandeparkar i/b Mr. Arun Panickar for Respondent No.5.

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CORAM : S.C. GUPTE, J.

DATE : 25 SEPTEMBER 2019

(Oral Judgement)

. Heard learned Counsel for the parties.

2 This Appeal from Order challenges an order passed by the City Civil Court at Mumbai on a notice of motion taken out by the Appellant (original plaintiff). By the impugned order, the City Civil Court dismissed the plaintiff's notice of motion.

2 The plaintiff claims to be a tenant/occupant of the suit premises, said to be of 897 sq. ft. carpet area in Wing ‘C’ forming part of a complex of five wings, bearing Nos.A to E, some of which have been categorized as C-1 structures by Municipal Corporation of Greater of Mumbai (“MCGM”) and accordingly a notice under Section 354 of Mumbai Municipal Corporation Act, 1888 (“MMC Act”) has been issued for their demolition. The notice is of 19 July 2016. In pursuance of this notice, the plaintiff has been required by Respondent Nos.4 and 5, who are, respectively, the owner and developer of the building to vacate the suit premises. It is the case of the plaintiff that the notice issued by the defendant-corporation and the report of the Technical Advisory Committee (“TAC”), based on which the building has been categorized as C-1 and notice has been issued under Section 354 of MMC Act, are illegal. The plaintiff seeks a declaration accordingly. The plaintiff also seeks a declaration that the plaintiff and other tenants are entitled to repair the suit building in accordance with Section 499 of MMC Act.

3 It is, particularly, the case of the plaintiff that originally the TAC report (report dated 30 January 2018), on the basis of which demolition of the suit building was sought by MCGM, was challenged in a writ petition, being Writ Petition (L) No.730 of 2018. That writ petition was disposed of by a Division Bench of this Court by accepting a statement on behalf of MCGM that TAC shall reconsider the issue of structural status of Wings A, B, C & E of the subject building and submit a fresh report to the appropriate authority of

MCGM. TAC has thereafter considered the matter afresh and made its report on 23 April 2018. On the basis of this report, MCGM has issued the impugned notice under Section 354 of MMC Act. The main ground of challenge to the TAC report and MCGM's action based on it, is that the plaintiff's structural consultants were not heard before preparing this fresh TAC report. It is also submitted that the original members of TAC, who prepared the earlier report, which was the subject matter of challenge before the Division Bench of this Court in Writ Petition (L) No.730 of 2018, and the current TAC, which has made the report impugned herein, comprise of different members.

4 If one has regard to the facts of the case, as borne out by the record, it is clear that though TAC was expected to reconsider the matter, it was not really meant to give a fresh hearing to the parties. There already were rival structural audit reports before TAC. The structural auditors of the tenants including the plaintiff herein, M/s Tech Re-build Civil Engineers, had submitted a report opining that the building was capable of being structurally repaired. On the other hand, M/s Shashank Mehendale & Associates, who were structural consultants appointed by MCGM, had opined that wing 'C' was a combination of RCC framed structure and load bearing structure comprising of ground and one upper floor, part of upper floor being covered with mangalore tile roof and part with AC Sheets and remaining part of the building having inaccessible terrace; considering the load bearing nature of the structure forming major part of wing 'C', none of the non-destructive tests was considered necessary; the

building was in a precarious condition and required to be immediately vacated and demolished. What is apparent from these two rival assessments of structural stability of the building, is that the question to be considered, and on which the Division Bench apparently did not find any discussion in the original TAC report, was, whether any particular tests were necessary and whether want of these tests could be said to have vitiated the original TAC report. The TAC has, after the matter was remanded to it, duly applied its mind to this aspect of the matter. After going through the structural audit reports of consultants, the TAC members opined that wing 'C' was ground plus one upper floor structure, having a combination of load bearing and RCC framed structures (the RCC structure being only the staircase and passage portion of the building). The members were of the view that heavy grass was seen grown on the periphery of the first floor slab; wooden members of the staircase were seen as decayed; and the staircase was on the verge of collapse. The members also observed uneven settlement and sagging of wooden joists of the floor slab. The members did not deem it necessary to carry out any non-destructive test or core test on the structural members of the building, as the usable portion of the building was a load bearing structure. The members were of the view that the building was beyond repairs and had outlived its useful life. The members, accordingly, came to a conclusion that 'C' wing of Jalaram Estate was in a severely dilapidated condition and repair methodology as well as repair costs suggested by the tenants' consultants, M/s Tech Re-Build Civil Engineers, was neither practical nor acceptable to TAC. TAC was of

the view that the building could collapse without any warning, thereby endangering life and property of both residents and passers-by.

5 Neither the approach of TAC nor the conclusion arrived at by it can be said to be either perverse or unreasonable. What TAC was expected to do was to assess the condition of the suit building having regard to the various structural reports before it. It appears to have duly applied its mind to the material circumstances disclosed in the reports. It is pertinent to note that even the tenants' consultants, M/s Tech Re-Build Civil Engineers, had found that there were major cracks in columns/beams of 'C' wing; there were seepages and leakages; and the staircase area and column condition were structurally not satisfactory. Even the tenants' consultants had suggested extensive repairs, involving costs of over Rs.32,00,000/-. Particularly having regard to the nature of the construction, it being partly RCC and partly load bearing, the TAC members did not deem it necessary to order any non-destructive test including core test on the structural members of the building. The TAC members accepted the observations of M/s Shashank Mehendale & Associates, the structural consultants appointed by MCGM; they did not agree with the recommendations of M/s Tech Re-Build Civil Engineers on either the repairability of the building or costs involved in carrying out tenantable repairs. All material and germane circumstances have been duly considered and no irrelevant or non-germane material or circumstances appears to have been considered by the TAC members

to arrive at their conclusions.

6 In its impugned order, the trial court has duly considered these aspects of the matter. It has correctly observed that reconsideration of the report originally prepared by TAC did not call for a fresh hearing of the structural auditors appointed by MCGM as well as tenants/occupants of the suit building. It has noticed that as required by the Division Bench of this Court, TAC did consider all relevant issues including whether it was necessary for the structural consultants of MCGM, on whose report the TAC had made its observations in its original impugned report, to carry out any particular non-destructive tests including core test. The court did not find fault with TAC's observation in its report that the suit building being a combination of load bearing and RCC frame structures, there was no need to carry out non-destructive as well as core tests on the RCC members. The court accordingly came to a conclusion that TAC had substantially complied with the orders of the Division Bench in Writ Petition (L) No.730 of 2018. The court was of the view that having regard to the nature of the expertise involved in assessing structural condition of an old building, the court was not expected to question expert assessment such as TAC report on technical grounds or take a different view of the technical aspects of the matter. The approach of the trial court as well as its reasons and conclusions clearly appear to be just and reasonable. There is nothing wrong with the decision making process in any view on the matter, and the conclusions do not suffer from any perversity. The impugned order, accordingly, does not merit any

interference.

7 Before I close this order, I must record that after this matter was heard at length, there were discussions between the parties. The Appellant/plaintiff had shown readiness in principle to accept the alternative accommodation offered by the developers, subject to the correct area in his occupation being ascertained. To that end, this court had even appointed a court commissioner for site inspection and measurement. The report prepared by the court commissioner was debated before this court. It is apparent from the report that area of the suit building in occupation of the plaintiff was about 627.98 sq.ft. The alternative premises offered by the developers, admeasuring about 634 sq.ft., appeared to this court to be a reasonable alternative accommodation, which was also in compliance with the applicable of law and the respective entitlements of the parties. The offer was either on ownership basis with payment of cost of construction plus GST per sq.ft. by the Plaintiff to the developers or on rental basis on payment of rent. The plaintiff, however, insisted on the other areas, including the passage leading to the entrance of the suit shop and back side open space, being included in the computation of the area in his occupation. Anyway these all are matters of debate, which cannot be decided at this stage. Under the guidelines of MCGM, which are framed in pursuance of directions given by this court, these matters may, even otherwise, appropriately be taken care of. Tenants of C-1 structures, which have to be demolished in pursuance of notices issued under Section 354 of MMC Act, are entitled to have

permanent alternative accommodations of equivalent size in new buildings to be constructed at sites of old C-1 structures. There is no reason to believe that the plaintiff would not get what is his due in accordance with law. This aspect of the matter accordingly need not hold us.

8 The Appeal from Order is, accordingly, dismissed. Costs to be costs in the cause.

9 In view of the disposal of the appeal, the Interim Application does not survive and is disposed of.

10 The costs of the commissioner, quantified at Rs.5,000/-, may be paid by Respondent No.5 to the commissioner within a period of two weeks from today.

11 Learned Counsel for the Appellant seeks a stay of this order. The Appellant did not have any specific ad-interim protection from this court. The Respondent-MCGM was orally directed to hold its hands, since the matter was being heard. Now that the matter has been comprehensively heard and disposed of with a reasoned order, there is no question of any protection being afforded to the Appellant. MCGM may, however, go ahead with the demolition of the suit building after a period of four weeks from this order being uploaded,

so as to enable the Appellant to remove his belongings from the suit premises.

(S.C. GUPTE, J.)