

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 883 OF 2018

Satish Kaur Sahni ...Petitioner
Versus
The Municipal Corporation of Greater Mumbai ...Respondents
& Ors

Mr Rajiv Narula, i/b Jhangiani Narula & Associates, for the
Petitioners.
Ms Rupali Adhate, for the Respondents-MCGM.

CORAM: S.C. DHARMADHIKARI &
G.S. PATEL, JJ
DATED: 9th July 2019

PC:- (Per G.S. Patel, J.)

1. The Petition under Article 226 of the Constitution of India assails a notice issued by the Municipal Corporation of Greater Mumbai (“**MCGM**”) under Section 354 of the Mumbai Municipal Corporation Act 1888 (“**the MMC Act**”).

2. The building in question is known as Anand Niwas. It is at Khar (West). It is a ground plus three upper floor structure of 20 units and four garages. The 6th Respondent is the landlord and lives

in the premises. There are presently said to be only four tenants in the building.

3. The sole ground canvassed in the Petition is that there are no reasons given in the notice and that in default of the Petitioners vacating their structures, they were threatened with disconnection of electricity and water supply. These services were ordered to be restored by a Division Bench order of 12th January 2018. By that order the Petitioners were put to terms and were to file an undertaking that they would continue to occupy building at their own risk and would be solely responsible for any damage or loss should the building collapse. We will proceed that there is such an undertaking though we are not immediately able to find it on the file.

4. There is an Affidavit in Reply. Mr Narula for the Petitioners says that the Reply discloses nothing. We disagree. As we have noticed in our separate order made already in *Inderjit Singh Sethi and Ors v The Municipal Corporation of Greater Mumbai and Ors* in Writ Petition No. 880 of 2018, Section 353B of the MMC Act was added by a 2009 amendment and it gave a reference or benchmark age of 30 years. Buildings older than this required a structural audit report. The MCGM issued such a notice on 18th July 2017. Nobody complied with it. The MCGM received a complaint from the Disaster Management Cell that one of the balconies at the rear of this building had collapsed on 19th September 2017. The MCGM visited the site on 21st September 2017. It was thereafter that the notice was issued under Section 354 of the MMC Act.

5. We have been shown certain photographs of the building and these appear to us show significant distress and wholly unsafe conditions. The Petition itself does not disclose that the Petitioners at any time attempted to carry out any repairs of their own, although as regards tenantable repairs this is their obligation under the Maharashtra Rent Control Act, and as regards structural repairs they have remedies under Section 14 of the Rent Control Act. In short, the Petitioners have spent nothing towards maintenance of this building. They have not provided a structural audit report to show that the building is sound although served with the notice under Section 353B. Our recent Judgments in *Mahendra Bhalchandra Shah and Ors v MCGM and Ors*¹ and in *Inderjit Singh Sethi and Ors v The Municipal Corporation of Greater Mumbai and Ors*² are sufficient to cover the law on the subject. There is no question of continuing any ad-interim order made at prima facie stage before the Affidavit in Reply was filed. We note that there is no Affidavit in Rejoinder.

6. We find no substance in the Petition. On account of the principle that we have applied we are unable to make any order in favour of the Petitioners. The Petition is dismissed. No costs.

7. All interim orders stand vacated.

(G. S. PATEL, J)

(S. C. DHARMADHIKARI, J)

1 Writ Petition (L) No. 1755 of 2019, Judgment dated 24th June 2019.

2 Writ Petition No. 880 of 2018.