

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO.1362 OF 2019

Prakash Makanji Devani ... **Petitioner**

Vs

**The Mumbai Municipal Corporation
of Greater Mumbai and Ors.** ... **Respondents**

AND

WRIT PETITION (L) NO.325 OF 2019

M/S Shreenath Associates ... **Petitioner**

Vs

**The Municipal Corporation of
Greater Mumbai and Ors.** ... **Respondents**

Mr.Anil Y. Sakhare, Senior Advocate a/w
Mr.A.R.Shaikh I/b ASD Associates for the
Petitioner in WPL/1362/19 and for
Respondent No.8 in WPL/325/19.

Mr.Ranjeet A. Thorat, Senior Advocate
a/w Mr.Suryajeet P. Chavan for the
Petitioner in WPL/325/19 and for
Respondent No.4 in WPL/1362/19.

Ms.Rupali Adhate for MCGM in both the
Petitions.

Mr.Rajesh N. Kachare for Respondent
Nos.5 to 7 in WPL/325/19.

Mr.Amol Meshram, Assistant Engineer (B
& F) R/South Ward present.

Mr.Amol Bhelkar, Sub-Engineer (B&F)
R/South Ward present.

Mr.Amey Raj, Junior Engineer (B & F)
R/South Ward present.

**CORAM :- S. C. DHARMADHIKARI &
M.S.KARNIK, JJ.**

DATE :- MAY 02, 2019

P.C. :-

1. The writ petition challenges the order passed by the Municipal Corporation dated 12th April, 2019. That is based on the report of the Technical Advisory Committee dated 28th March, 2019.

2. The contention of Mr.Sakhare, learned senior advocate appearing in support of this writ petition is that earlier the Technical Advisory Committee meeting of 14th August, 2014 concluded that the building under reference is repairable and the repair works may be carried out at the earliest under the supervision of Structural Consultant. Proper propping should be provided to the building by the owner/occupants and if they do not provide it, the Ward office shall provide it at their risk and cost. The further argument of Mr.Sakhare is that this opinion of the Technical Advisory Committee was challenged by filing Writ Petition No.2732 of 2014 and that came to be dismissed by this Court on 29th September, 2015.

3. Now, the Municipal Corporation holds that the structure is beyond repairs and that it should be categorised as a "C1" category structure. It is required to be demolished.

4. Such an opinion without discussing, all the reports that have been brought on record, the case of the petitioner and and the merits and demerits thereof, discloses total non application of mind. The Municipal Corporation is, therefore, in error in not complying with the mandate of law. The subjective satisfaction is vitiated by perversity and arbitrariness. Therefore, it should be interfered in our writ jurisdiction.

5. With the assistance of Mr.Sakhare, we have perused the writ petition and all annexures thereto.

6. It is evident that when the Technical Advisory Committee met and discussed the issue of the subject structure being dangerous and dilapidated, it had before it the entire material. The structure/building known as “Anand Bhavan” is ground + one load bearing structure, existing since more than 70 years. A Structural Audit Report was submitted by the owner-M/S Shreenath Associates on 23rd October, 2013 through its Licensed Structural Engineer. Thereafter, the Deputy Chief Engineer (Building Proposal), Western Suburbs-II confirmed this Audit Report. However, after the notice was issued to pull down, an intervention was made by a local MLA. At his instance, the occupants/tenants were allowed to have a re-audit of the structure. Their Licensed Structural Engineer submitted a report that the building is in good, habitable and sound structural

condition. However, it needs to be repaired for extending the life of the structure.

7. The conclusion of the Technical Advisory Committee is to be found at pages 65 and 66 of the paper-book. It concluded that the structure can be repaired provided repair work is commenced at the earliest and all the arrangements for carrying out repairs are made. After this conclusion and opinion was challenged unsuccessfully in writ jurisdiction, what transpires is that the Municipal Corporation on 8th December, 2014, before even this opinion and conclusion of the Technical Advisory Committee is confirmed by this Court, informed the owner that the repair proposal has to be submitted and if the owner does not submit it, the tenants can submit it. It appears that similar notice was issued on 24th August, 2016 to the tenants/occupants. After this communication was issued and attention of the owners, tenants and occupiers was invited to the earlier opinion and finding of the Technical Advisory Committee as also the correspondence carried out, it is evident that the repair permission was granted on 12th August, 2016 to carry out repairs proposed by the Structural Consultant -Mr.Hiren Tanna and under his supervision. The repairs that were required to be carried out are as under:-

“You are therefore instructed to carry out the repair works to building under reference under the supervision and as recommended by Licensed Structural Engineer, Shri Hiren Tanna as mentioned below :-

- a) Repairing to A.C. Sheet roof on need base.
- b) Replacing broken Mangalore roof tiles with new tiles.
- c) External wall plaster on need base.
- d) Polymer repair to cantilever balcony slab, beam.
- e) Repairing/replacing wooden members on need base.
- f) Repairing/replacing plumbing lines etc. on need base.
- g) Painting.
- h) Any other miscellaneous work, as required.”

8. The terms and conditions on which the repair permission was granted are clear. Thereafter what happens is that on 6th September, 2018, the Municipal Corporation issues a notice under Section 353(B) of the Mumbai Municipal Corporation Act, 1888 (For short, “the MMC Act”) and invites the attention of the parties that the building being more than 30 years old, every owner/occupier of such a building shall cause such building to be examined by a Structural Engineer registered with the Corporation for the purpose of certifying that the building is fit for human habitation. The test to be carried out for the purpose of audit is highlighted and it is evident from the further correspondence of 12th January, 2019, copy of which is at page 77, that the building is completely neglected. Despite permission being granted, there is no attempt made to strengthen the structure by repairing it. That is why further notice under Section 489 of the MMC Act was issued. The structure was directed to be vacated so that the safety of the occupants can be

assured. The necessary satisfaction in terms of Section 354 of the MMC Act is recorded in both these communications, copies of which are at Exhibits 'L and 'M' to the petition.

9. Then, at Exhibit 'N' is the impugned order which goes to hold that all the three structural reports were considered. Meaning thereby, the one submitted by the owner, occupants and that of the Municipal Corporation. It is clear from this communication and the impugned order that more than three years had lapsed from the date of the earlier report and the finding of Technical Advisory Committee. No repair work, as suggested by the Licensed Structural Consultant, is carried out by the tenants or owner of the building due to which the building has deteriorated further. It is dangerous. In the presence of the parties, the structural audit was carried out. They were informed to carry out audit forthwith. The owner submitted a Structural Audit Report and out of four tenants, three tenants submitted the Structural Audit Report of one Mr.H.J.Mair. The three tenants who submitted the Structural Audit Report had similar findings as that of the Structural Engineer/Auditor engaged by the landlord/owner. Both certified that the building is severely damaged, is in dilapidated condition and must be evacuated and demolished immediately. Once there is a broad agreement between the Structural Engineers/Auditors and it is evident that

only the petitioner relied upon another Structural Audit carried out by one Hiren Tanna, then, that report has rightly been discarded. That report has been discarded by assigning reasons. The Municipal Corporation has come to the conclusion that there is a broken drain chamber observed on west and south side. Reinforcement exposed on electric meter room roof slab which is detached from the main building. Uneven flooring observed in one of the rooms, staircase area/column condition, common areas may be in good condition according to this Engineer, but this gentleman does not mention anything as to why when repair permission was obtained, the repairs were not carried out and the structure was allowed to deteriorate further. Thus, on an over all consideration, the Municipal Corporation comes to the conclusion that there is no point in allowing the structure to remain at site. That being in dilapidated and ruinous condition, likely to fall, endangers the life of the occupants and the passers by so also residing in the neighbourhood, we do not agree with Mr.Sakhare that such a conclusion is either perverse or arbitrary. All the relevant facts and circumstances have been taken into consideration. No material, vital or crucial, is brushed aside. We are not court of appeal which can re-appreciate and re-appraise the same finding. It is in these circumstances that the Municipal Corporation has come to the conclusion that the structure has to

be declared as unfit and unsafe for human habitation and must be pulled down. Such a conclusion is imminently possible and we do not think that we should interfere therewith in our writ jurisdiction. The writ petition, thus, stands dismissed. There will be no order as to costs.

10. Having dismissed Writ Petition (L) No.1362 of 2019 filed by one of the occupants/tenants today, we do not see that there is any impediment and the Municipal Corporation must give effect to its notice under Section 354 of the MMC Act as also the impugned order dated 12th April, 2019. The necessary steps be taken as expeditiously as possible and within a period of three weeks from today as stated by the advocate for the Municipal Corporation. The statement made in the presence of the municipal officials is taken as an undertaking given to this Court and the needful be done within a period of three weeks and for enabling the Municipal Corporation to pull down this building, all assistance should be rendered by local authorities other than the Municipal Corporation, including the nearest police station.

11. In view of the aforesaid reasons, Writ Petition (L) No.325 of 2019 stands disposed of accordingly.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)