

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

WRIT PETITION NO. 1552 OF 2019

Gracy Abraham and Ors.	}	Petitioners
versus		
Municipal Corporation of	}	
Greater Mumbai and Ors.	}	Respondents

Mr.Ashok C. Giri for the petitioners.

Ms.Rupali Adhate for the Municipal Corporation.

Mr.Deepak Bodagire-Junior Engineer (Building and Factory), P/North Ward present.

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

DATED :- AUGUST 9, 2019

P.C. :-

1. By this writ petition under Article 226 of the Constitution of India, the petitioners are challenging a notice issued under section 354 read with section 489 of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as “the MMC Act”). There is a further notice issued and as a consequence, simply because the main notice sets out as to why the legal provision is invoked, it is sufficient to refer to the first notice. That notice, a copy of which is at page 41 of the paper book, reads as under:-

MUNICIPAL CORPORATION OF GREATER MUMBAI

Office of the Astt. Commissioner
P/N Ward Officer Liberty Garden
Mamletdarwadi,
Malad (West), Mumbai - 400 064.

Notice under section 354 of the Mumbai Municipal
Corporation Act
Read with section 489 of M.M.C. Act.
Notice No.ACPN/354/BF-31/575/2015
10/7/2015

To,
Owner/Occupier,
Shri Alice D'Souza-Respondent No.5.
Dan Ray Partment,
Domnic Colony No.02, Orlem,
Malad (W), Mumbai 400 064.

Whereas it appears to me that the building known as Dan Ray Apartment consisting of G+2 R.C.C. framed structure situated at Domnic Colony No.02, Orlem, Malad (W), Mumbai-400 064, of which you are the owner/occupier of the building which is in ruinous condition likely to fall or in any way dangerous to any person occupying resorting to, or passing by such structure or any other structure or place in the neighbourhood thereof. I hereby require you under section 354 of the Mumbai Municipal Corporation Act to vacate and pull down the structure/building and to prevent all cause of danger there from.

I further hereby require you under the aforesaid section of the Mumbai Municipal Corporation Act, forthwith before proceeding pull down and secure the said structure to set up a proper and sufficient board or fence for the protection of passersby and other persons. I give you notice, that if within seven days from the service or receipt hereof this requisition be not complied with you will render yourself liable to prosecution under Section 475-A of the said act and I may thereafter, pursuant to the provision of section 489 of the said Act, take such measures or cause such work to be executed or such thing requirements to be done as mentioned in the notice under section 354 of M.M.C. Act as shall in my

opinion be necessary for giving due effect to this requisition and you will be liable for the expenses thereof which will be recovered from you in the manner provided under section 491 of the said Act before the appropriate forum/court of law. No portion of the structure within the regular line of the street may be reconstructed nor anything within the scope of section 342 of the said Municipal Corporation Act, other than the work which you are expressly required by this notice to do be made or done without previously giving notice thereof as required under section 342 aforesaid.

In view above and to safe guard precious public/occupants/passersby's lives and property and using provisions of section 489 of MMC Act, this office will take such all measures and comply the requisition of the notice including pulling down the dilapidated building at the risk and cost of owner/occupier/tenants/society/trust/developer if you failed to comply to requisition of notice within notice period.

**Photographs of the dilapidated building Dan-Ray
Apartment**

* * * *

- If any mishap and damaged occurs to the structure and to lives of the people while pulling down the building, this office will not be held responsible.
- If any dispute arises regarding the ownership of the plot and structure this office will not be held responsible.
- The work of pulling down of building shall be executed under supervision of Licensed Structural Engineer registered with MCGM.
- Before starting the work, you shall inform this office in advance along with phase wise programme under intimation of C.E.O.
- While execution of work, if any mishap takes place, this office will not be held responsible.

Asth.Engr (Bldg&Fact)
P/North ward

2. The five petitioners before us are alleging that the first respondent-Municipal Corporation acted at the behest of the second respondent, a partnership firm carrying on business of developing properties. It is urged that one Daniel D'souza and thereafter Mrs. Deborah D'souza claim to be original owners and the petitioners are the tenants. The so-called developer of this tenanted building is after the petitioners and other occupants as also Mrs. Deborah D'Souza to vacate the building. He wants them to be forcibly evicted, though they are paying the monthly rent to the third respondent to this writ petition, who is stated to be the legal heir of the original owner having 1/8th share in the tenanted premises. The second respondent approached the petitioners and thereafter finding no response to the communications addressed to the petitioners, he then approached the Municipal Corporation. At his behest and at his instance, the subject notice has been issued.

3. In para 13 of the petition, it is stated that one Wilfred Castelino, a partner of respondent no. 2, on 1st January, 2018, threatened the petitioners, took their signatures on blank papers together with other occupants/ tenants and submitted to the Municipal Corporation of Greater Mumbai that they have no

objection if the water and electricity connections are discontinued and then the building is brought down. Though it is stated that the second respondent has no right or locus, yet, the municipal officials colluded with him and issued the subject notice.

4. Paragraphs 13 to 15 of this writ petition are the foundation on which the final relief is claimed. They read as under:-

“13. Petitioners state that on 01/01/2018 Mr. Wilfred Castelino the partner of the Respondent No.2 Developer by threatening them took the signatures of Petitioners and some of the other tenants of the blank papers for submission to MCGM so that the water and electricity connection of the “tenanted premises” can be disconnected even he assured that he has managed the officials of the respondent No.1 and he is managing to get the notice of disconnection of electricity and water just to threaten Mrs. Deborah D’souza who is one of the legal heirs of late Danial D’souza and Occupier of flat No.2 on the ground floor.

14. Petitioner states that in spite of having No locus the Defendant No.2 so called Developer has issued a notice dated 26/05/2016 to the Petitioners and other tenants and stated them that the “**tenanted building**” is in dilapidated condition and is likely to fall and is dangerous for the people staying in the **tenanted building**” as well neighbouring building for the person passing the “**tenanted building**”.

15. Petitioner states that the respondent No.2 in collusion with the officials of the respondent No.1 with an aim to harass the innocent petitioners, are not allowing the petitioners to repair the “tenanted building” which is very much essential, whereas the Respondent No.1 with illegal motive desirous to demolish the “tenanted building” at the cost of the innocent petitioners wants to make unlawful gain for themselves by redeveloping the “tenanted building”.”

5. In the further paragraphs, it is alleged that the property is in repairable condition. If permission is granted by this court after setting aside the subject notice, then, the repairs can be carried out. It is stated that the second respondent assured to the petitioners that they have managed with the municipal officials and they will not take any action to demolish the building, but they are together trying to threaten Mrs. Deborah D'souza, who is part owner of the property and her legal heirs. It is stated that the notice was replied through advocate, but there has been a structural audit carried out by the landlord. A copy of this structural auditor's report is not supplied to the petitioners. Then, it is stated that the petitioners have obtained a structural audit certificate dated 15th February, 2018, copy of which is at Exhibit 'I' to the petition.

6. The usual pleadings are that this court has passed an order in all such cases mandating that the Municipal Corporation must follow certain guidelines and principles. Writ Petition (L) No.1135 of 2014 and orders made therein are relied upon.

7. Though the Municipal Corporation's affidavit has not been filed and it is purported to be filed today, but ignoring that as well, we can dispose of this writ petition.

8. This court was persuaded to pass an ad-interim order in this petition instituted as late as on 12th March, 2018 and which ad-interim order dated 15th March, 2018 reads as under:-

“ Not on board. Taken on board.

2. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the second and third respondents. The learned counsel appearing for the second and third respondents seeks time to file a reply. Place the petition on 17th April 2018 under the caption of fresh admission.

3. By way of ad-interim relief, we restrain the first respondent from taking an action of demolition in respect of the subject building on the basis of the impugned notices, subject to condition of petitioners filing undertakings in this Court stating that they will continue to occupy the subject premises at their own risk and in the event of fall of the building or any part thereof, they will be solely responsible for the loss or damage which may be caused to the third parties. Such undertakings shall be filed within a period of two weeks from today. If the undertakings are not filed within the stipulated period of two weeks, the ad-interim relief shall stand vacated without further reference to the Court.

4. We direct the learned counsel for the respondents to inform the concerned authority to immediately restore the water supply to the premises occupied by the petitioners.”

9. After a perusal of the writ petition and its annexures, we inquired from the petitioners' advocate as to how this building/structure at site can be said to be safe for human habitation. He says that it is strong and repairable. They concede that it is 53 years old, but still it is in repairable condition. He would submit that though the initial notice dates back to 2015-16,

still, for all these years, nothing untoward has happened. Therefore, an opportunity be given to the petitioners to bring material to satisfy this court that the building can be repaired. The argument is that the pleadings are enough to infer mala fides, arbitrariness and perversity in the action.

10. We are unable to agree with the learned counsel for more than one reason. Firstly, by series of orders passed in similar cases involving challenge to identical notices, this court has summarised the legal principles. These decisions are: (1) *Mahendra Bhalchandra Shah & Ors v Municipal Corporation of Greater Mumbai & Ors*, Writ Petition (L) No. 1755 of 2019, decided on 24th June 2019; (2) *Inderjit Singh Sethi & Ors v Municipal Corporation of Greater Mumbai & Ors*, Writ Petition No. 880 of 2018, decided on 9th July 2019; (3) *Ramesh Nathubhai Patel & Ors v State of Maharashtra & Ors*, Writ Petition No. 1500 of 2016, decided on 9th July 2019; (4) *Kutbi Manzil Tenants Welfare Association v Municipal Corporation of Greater Mumbai & Ors*, Writ Petition No. 2451 of 2018, decided on 16th July 2019; (5) *Sundar R. Gavaskar & Ors v Municipal Corporation of Greater Mumbai & Ors*, Writ Petition No. 602 of 2019, decided on 29th July 2019; (6) *Richard Gasper Mathias & Ors v Municipal Commissioner, Municipal Corporation of Greater Mumbai & Ors*,

Writ Petition No. 2108 of 2018 decided on 1st August 2019. Once the legal principles are set out, then, all that remains is to apply them to the facts in the given case.

11. In the instant case, the annexures to the writ petition would reveal that this building, which is occupied by the petitioners, some of whom are senior citizens, is more than 50 years old. Its condition is really precarious. The notice that is issued by the Municipal Corporation itself refers to the condition of the building and is depicted in the photographs. Even if one ignores the allegations pertaining to the second respondent, for we are deciding the challenge to the notice issued by the Municipal Corporation, what we find is that Exhibit 'E' is a notice dated 10th July, 2015 addressed to Alice D'souza, the part owner or the heir of the part owner. The petitioners have not complained about her involvement or collusion with anybody. The petitioners may be arguing to the contrary, but this person has been informed by the Municipal Corporation that the building, which is a ground plus two RCC frame structure, situated at Domnic Colony No.02, Orlem, Malad (West), Mumbai 400 064, is in ruinous condition, likely to fall and dangerous to any person occupying it, passing by or residing in its neighbourhood. Such notices with photographs of the dilapidated building have been issued to Daniel D'souza and

then to Debbie or Deborah, who is the occupant of Room No.2 and to one Melissa and Rajan. They were also informed that the municipal office (P/North Ward) is going to disconnect the utility services such as electricity, water and gas. The building was to be then vacated and that stage was also reached by 2017.

12. The response from Alice D'souza to the initial notice is that she should not be held responsible for any mishap/ casualty for she had informed to the occupants of the building that there is a municipal notice, by which there was a threat to pull down the building. This lady did not dispute the contents of the notice. Thereafter, the area information statement was also prepared. There was, thus, an obligation on the owner or part owner to pull down the structure in compliance with the notice. He/she could seek eviction of the tenants by approaching the competent court. In that process, he/she would have to comply with the further requirements of the rent control legislation and undertake to bring back all the occupants. There was no question until then raised about the building *not* being dilapidated or about any collusion.

13. The response, before this writ petition was filed, on behalf of the petitioners and others dated 16th October, 2017 is at Exhibit 'G' at page 55 of the petition. The same reads as under:-

“Date 16/10/2017

To,
Assistant Engineer (Building & Fact.)
P/North Ward,
and Designated Officer-IV,
Office of the Assistant Commissioner,
P/N Ward Office, Liberty Garden,
Mamletdarwadi, Malad West,
Mumbai-400 064

Ref: Notice No.ACPN/727/SR AE/B&F/
dated 03/10/2017

Sir,

With reference to the above mentioned letter, we the following tenants of Dan-Ray Apartment, Dominic Colony, 2nd road, Orlem, Malad (W), Mumbai-400 064, have to seek the following clarifications from the Municipal Corporation of Greater Mumbai (MCGM).

Sr. No.	Name of the Tenant	Flat No.	Signature
1	Mrs.Yvonne Furtado	14	
2	Mr.Rajan Fernandes	15	
3	Ms.Philomena Pinto	13	
4	Mrs.Mary Cherian	3	
5	Mrs.Gracy Abraham	4	
6	Ajay Wariyar	7	
7	Mrs.Rose Fernandes	9	
8	Mr.A.I.Fernandes	8	
9	Mr.Ignateous Savio D’cruz	10	

Firstly, it is to state that, we the tenants would like to thank you for bringing it to our attention that the building is in “dilapidated” condition and that it needs to go in for redevelopment. While the area statement and the warnings mentioned by you in the letter are being taken into due consideration by the respective tenants, **we would like to point out that the MCGM does not mention or promise the tenants of offering any alternative accommodation in the case of having to vacate the said premises.**

Sir, I would like to bring to your attention that a large majority of the tenants staying in the said building are senior citizens and women who have no alternative place to live. It is the responsibility of the MCGM that before it issues such threats such as disconnection of utility service, to provide for alternative accommodation for these people. If it cannot do so then it should ensure that those responsible for the delay in redevelopment of the building, such as one of the landlord Deborah D'souza and husband Lawrence D'souza, residing in Dan-Ray Apartments, Flat No.2, Ground Floor, should be made to provide an alternative accommodation or penalized for holding up the redevelopment process and thereby endangering the lives of the tenants living in it.

We the tenants have been repeatedly requesting the landlord for development of Dan-Ray Apartment. We have even written to the MCGM on numerous occasions, the last letter dated 18/07/2015, to intercede for us and push the landlord for redevelopment. However, our pleas have fallen on deaf ears, and the building is now come to this dilapidated condition.

There was a meeting on 23/11/2014 with the builder called Lord's Group who is appointed by the owner where we in principle agreed for redevelopment and the builder mentioned to all of us that he would share a plan with us. So far we have not received a plan from the building nor from the owner.

We are now being asked to vacate the flats without providing us the future of our stay. Further, we would like to state that we are all senior citizens and ladies staying in the building for over 40 years.

With regards,

All the tenants as stated above.

P.S. We have also sent a copy of this letter to the Mumbai Police Commissioner's office and to Sudhir Mahadik, the Inspector in charge for Malad West Police Station."

(emphasis supplied by us)

14. None of these statements and which we have reproduced with some purpose and intent dispute the condition of the building. On the contrary, there is an express admission in this communication, annexed to the petition itself, that the building is indeed dilapidated and in need of re-development, and that the petitioners support it. We are unable to see how today their counsel can argue to the contrary and say that the building is sound and is not dilapidated or does not need to be pulled down for reconstruction/re-development. All the persons responding to the notices of the Municipal Corporation are only anxious about their rehabilitation in future, but they do not dispute the factual status regarding the structural deterioration and dilapidated condition of the building.

15. Now, to the contrary, it is argued that the municipal officials have colluded with the owner and the developer and are seeking to demolish the building, which is not dilapidated, far from being dangerous.

16. There is a letter addressed by M/s.Chitnis Vaithy and Co., Advocates and Solicitor on 6th August, 2015 to the Assistant Engineer (Building and Factories), P/North Ward and Designated Officer (III) of this Ward informing that there was a notice issued on 22nd May, 2015 invoking section 353B of the MMC Act. The

similar notice issued to the owner of the building, namely, Dan Ray Apartment calls upon the owners to submit a structural audit report.

17. In one of the orders passed recently, we have not only reproduced section 353B of the MMC Act (*Sundar R. Gavaskar & Ors. v Municipal Corporation of Greater Mumbai & Ors, supra*), but the Statement of Objects and Reasons leading to its insertion in the MMC Act. That this provision serves a salutary purpose. That this provision is inserted after the legislature was alarmed by increasing incidents of collapse or fall of old buildings. The old and dilapidated buildings in the city and suburbs resulted in casualties. The legislature stepped in and set a benchmark. Every building that is 30 years old or more must be audited and that audit has to be done within a specified time. The landlord or owner not carrying out such audit does not mean that tenants are absolved of that obligation. That obligation has then to be discharged by the occupants and tenants and of-course, they can have their remedies against the landlord intact.

18. In compliance with such a provision, all that we have at page 59 is a certificate, without any report. That is by M/s.A.A. and Associates which claims to be a firm of Consulting Structural Engineers. Though the structural audit should have been carried

out in response to a notice under section 353B issued on 22nd May, 2015, the certificate is dated 10th February, 2018, a full three years later. This gentleman says that the foundation and RCC frame work is intact. The balcony above Room No.13, the beam, ceiling as well as the chajja is tampered and damaged. The distress is observed but the building is repairable. The repairs should be undertaken under the supervision and guidance of an experienced licensed structural engineer. There is no reference in this certificate to any test as required to be carried out by an auditor before he submits a structural report. Once he says that building is repairable, the repair method and estimated repair costs are also not mentioned by him.

19. We do not think that the Municipal Corporation was required to take any note of this response from the petitioners. We are of the firm view that with the above material, this writ petition could not have been filed to invoke this court's equitable, discretionary and extraordinary jurisdiction under Article 226 of the Constitution of India. There is a vague and bald assertion of mala fides and collusion, but neither any particulars are forthcoming in the pleadings nor are they supplied when the counsel proceeded to seek the ad-interim protection of this court. The court protected the petitioners and their occupation, but

without any *prima facie* satisfaction being recorded with regard to the arbitrariness or perversity on the part of the municipal officials. We also have not seen any material of this nature either in the pleadings or in the correspondence. Rather, the position is totally contrary for in the correspondence with everybody, including the municipal officials, the petitioners do not dispute that the building is old and dilapidated and that the notices have been issued by relying upon correct legal provisions. The occupants are stated to be senior citizens and they are in helpless state. They do not know what to do if the landlord has neglected the building. That is not what is held to be enough by this court in the above referred judgments so as to displace the notice issued by a statutory body performing public duty.

20. In the circumstances, we are not obliged to entertain this writ petition. While we dismiss it, we also vacate the ad-interim order forthwith.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)