

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

WRIT PETITION (L) NO. 986 OF 2019

Canara Bank	}	Petitioner
versus		
The Municipal Corporation	}	
of Greater Mumbai and Ors.	}	Respondents

Mr.G.S.Godbole with Ms.Radha H. Bhandari I/b. M/s.M.V.Kini and Co. for the petitioner.

Mr.A.Y.Sakhare-Senior Advocate with Ms.K.H.Mastkar for respondent no.1.

Mr.Prasad Dani-Senior Advocate with Mr.Ooril Panchal I/b. M/sMahimtura and Co. for respondent nos. 3 and 4.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

DATE :- MARCH 26, 2019

P.C. :-

1. After hearing both sides, we are of the opinion that presently, the notice issued under section 354 of the Mumbai Municipal Corporation Act dated 27th July, 2018 remains unenforced and unexecuted.

2. Surely, section 354 does not provide anything, much less vest a right in anybody other than the Municipal Corporation, to decide whether a structure or a building is unsafe or is in such a condition that it is imminently likely to fall.

3. Since the notice is clamped in July, 2018 and more than 8 months no action has been taken, we called upon Mr.Godbole appearing for the petitioner-bank to take instructions. On taking instructions, Mr.Godbole informs the court that the petitioner will ensure that every single occupier will vacate the structure or the premises, in respect of which the notice has been issued, within a period of four weeks from today. Mr.Godbole takes further instructions and makes a statement that the petitioner will, at its own expenses, cost and charges, erect the props or make such arrangement so as to ensure that the building does not collapse and if it collapses, it will not in any manner cause serious injury, harm or loss of life to passers by or residing adjacent to it. Both statements made by Mr.Godbole are accepted as undertakings given to this court.

4. In the event the building is vacated and the Municipal Corporation, through its competent officials, is satisfied that it is totally vacant and that all safety measures are in place, then, the Municipal Corporation will, through its Technical Advisory Committee, allow both, the petitioner and respondent nos. 4 and 5 to bring before this committee such materials in the form of structural reports or otherwise and convince that committee not to recommend to the Municipal Corporation to go ahead with the

subject notice, but to allow the petitioner to carry out such repairs as would make the structure stable and safe for human habitation. In the event respondent nos. 4 and 5 wish to rely on contra material, they can produce it and rely upon it before this committee. The committee then to decide, after evaluation of all the materials, whether the notice should be allowed to stand and make the recommendations accordingly. Based on that, the Municipal Corporation shall take a final call and decision and then enforce and execute its notice.

5. In the event the structure is not vacated, the petitioner will not have any such opportunity and in terms of the aforesaid directions. Thereafter, the notice shall be executed and enforced forthwith.

6. Further, we direct the Technical Advisory Committee, in the event all compliances in terms of the above are made, to make its recommendations, as expeditiously as possible and within a period of two months from the date of appearance of the parties. Needless to clarify that the Technical Advisory Committee will make fresh recommendations uninfluenced by its earlier order. In any event, that order does not remain after our comprehensive directions and it is set aside, subject to the compliance as above.

7. The writ petition is disposed of by clarifying that we have not expressed any opinion on the rival pleas.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)