

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

WRIT PETITION NO.1127 OF 2015

Smt. Anandiben B. Panchal Petitioner
Vs.
Municipal Corporation of Greater
Mumbai & Others Respondents

WITH

WRIT PETITION NO.152 OF 2018

M/s Nigasu Engineering Co. &
Others Petitioners
Vs.
State of Maharashtra & Others Respondents

WITH

WRIT PETITION NO.1020 OF 2014

Ismail Mohsin Sham Petitioner
Vs.
The Municipal Corporation of
Greater Bombay & Others Respondents

Mr. Y.K. Tiwari i/by Mr. Rajesh M. Yadav for the
Petitioner/s in WP-1127/2015 & WP-152/2018
and for Respondent Nos.4, 8, 9 to 11 & 13 in
WP-1020/2014.

Mr. Sajid Shamim i/by Shamim & Co. for the
Petitioner in WP-1020/2014, for Respondent
No.4 in WP-1127/2015 and for Respondent
No.3 in WP-152/2018.

Ms Deepali Patankar, Honorary Asst. to GP,
for the Respondent-State in WP-1127/2015.
Ms Uma Palsuledesai, AGP, for the Respondent-
State in WP-1020/2014 & WP-152/2018.
Ms Rupali Adhate for the Respondent-MCGM
in all petitions.

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

DATE : JULY 09, 2019

P.C:

1. We have listed writ petitions for direction in which notices under Section 354 of the Mumbai Municipal Corporation Act, 1888 (“**the MMC Act**” for short) have been challenged by the tenants/occupants on the ground that the Municipal Corporation has acted at the behest of the owners/landlords and caused the notices to be issued so as to bring down the structures, thereby jeopardising their rights in the immovable property/buildings.

2. The Courts have been persuaded to pass interim orders restraining the Municipal Corporation from enforcing its own notices. The other part of the interim order is more

disturbing and that is allowing the petitioners/occupants to reside or carry on business in these old and dilapidated structures at their own risk and on their undertakings.

3. On more than one occasion we have observed and thereafter held that such undertakings cannot be enforced nor such undertakings will ever absolve the Municipal Corporation from carrying out the statutory obligations and duties. The structures, which are identified as dilapidated or ruinous or dangerous and likely to fall, cannot then remain at site for they pose a threat to the life of others who reside in the neighbourhood and innocent passers-by. It is this over-riding public interest which has prevailed upon us not to allow such arrangements to continue any further and particularly in matters where the opinion of the Municipal Corporation, based on which the notices have been issued, is not vitiated by wednesbury unreasonableness, arbitrariness or unfairness, leave alone mala fides and perversity. The unreasonableness and perversity attributed to the authorities in such cases are of a degree where this Court must record its independent satisfaction that no

reasonable person, in this position, would arrive at the conclusion or opinion which these authorities have arrived at and thereafter proceeded to issue a notice for demolition. This indeed is a drastic action but it is required to be taken so as to subserve public good and in the interest of public safety. We do not think that in such matters as are before us, on the basis of some conflicting opinions of Structural Auditors, we can allow the state-of-affairs to continue at site.

4. In fact, in both the petitions filed by the tenants, namely, Writ Petition No.1127 of 2015 and Writ Petition No.152 of 2018, Mr. Tiwari does not dispute that the building is old or dilapidated or in ruinous condition and likely to fall. The apprehension is that in the event the notices are enforced, the occupants, who even do not have documents, will not have the opportunity to request the Municipal Corporation to grant them time to shift or to make alternate arrangements at the very site. We do not think that we are concerned with such request for we do not know where the petitioners/occupants want to reside but they cannot reside in the vicinity of this very building or in the

same compound when that building has to be brought down. Therefore, it is entirely for them to enforce their private rights and which are specifically saved by sub-section (5) of Section 354 of the MMC Act. Our two Judgments delivered recently are enough to reach the conclusion that the petitions of the tenants/occupants deserve to be dismissed. One of them is delivered in **O.S. Writ Petition (L) No.1755 of 2019 (Mahendra Bhalchandra Shah & Others v. Municipal Corporation of Greater Bombay & Others)**, decided on 24-6-2019. Following that, in several other matters, notices issued under Section 354 of the MMC Act have been upheld. We apply the same principle and uphold the municipal action in these matters. The writ petitions of the tenants/occupants are dismissed and the interim orders passed therein are vacated forthwith.

5. In view of dismissal of the petitions filed by the tenants/occupants, the landlord's petition (Writ Petition No.1020 of 2014) praying for a direction to the respondent/Municipal Corporation and the State to take action

against respondent Nos.4 to 13 in vacating the suit building, so also a direction to the Municipal Corporation to pull down the suit building and a further direction directing respondent Nos.4 to 13 to vacate their respective premises in the suit building in order to comply with the Section 354 notice, does not survive. It accordingly stands disposed of.

(G.S. PATEL, J.)

(S.C. DHARMADHIKARI, J.)