

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

WRIT PETITION NO.2272 OF 2017

Sanjay Dhansukhlal Shah and Ors.	...	Petitioners
versus		
Municipal Corporation of Greater Bombay and Ors.	...	Respondents

Mr.J.G.Damani for the Petitioners absent.

Mr.Sanjay D. Shah-Petitioner No.1
present.

Mr.Mahesh Dalvi, Hon.Secretary of
Prasanna Jeevan Co-Op. Housing Soc.
Ltd.-Respondent No.7 present.

Ms.Rupali Adhate for MCGM.

Mr.Ganesh S. Satpute, Junior Engineer,
Building & Factory, R/C Ward present.

**CORAM :- S. C. DHARMADHIKARI &
SANDEEP K. SHINDE, JJ.**

DATE :- AUGUST 01, 2019

P.C. :-

1. On 18th July, 2019, on this petition, the following order was
passed:-

“This Writ Petition has been admitted and interim order is operating till date, but the apprehension of the respondent nos.1 to 3 is that Technical Advisory Committee cannot finalise its recommendations and conclusions until inspection is carried out of all the wings namely, A, B, C and D of the building in question.

2. There is co-operative housing society called Prasanna Jeevan Co-operative Housing Society, Eksar/ Chandavarkar Road, Borivali (West), Mumbai 400 092. Petitioner no.3 is residing in D Wing. The instructions to Ms.Adhate appearing for respondent nos.1 to 3 are that the building has four wings, but D wing has not

been allowed to be inspected till date. Secondly, A to C wings are in such state that they require urgent repairs to the structure.

3. She says, on instructions, that within two weeks from today, inspection will be carried out, report of the Technical Advisory Committee will be finalised and affidavit-in-reply to this petition will be filed, so also copy will be served on Mr.Damani.

4. On instructions of the Secretary of this Co-operative Housing Society (Respondent No.7) who is present in the Court, Mr.Damani says that Engineer/Designated Officer can inspect D wing of the society on 20th July, 2019. Let the inspection be carried out and all concerned, including residents and office bearers of the society shall co-operate with the municipal official and allow him to peacefully carry out the inspection.

Stand over to 1st August, 2019.”

2. After this order has been passed, Ms.Adhate says that inspection has been carried out of all the wings, namely, ‘A’, ‘B’, ‘C’ and ‘D’ of the building in question and she tenders an affidavit of Mr.Rajesh P. Merai, Assistant Engineer (B&F), R/Central Ward of the Municipal Corporation. He says that the building-Prasanna Jeevan Co-operative Housing Society situate at Eksar Junction, Chandavarkar Road, Borivali (W), Mumbai has been issued a notice under Section 354 of the Mumbai Municipal Corporation Act, 1888. A structural audit has been carried out and the report has been submitted on 5th September, 2013 in respect of wings ‘A’, ‘B’, ‘C’ and ‘D’. One Mr.Yogesh Patel has concluded that the building is more than 45 years old, is in a dangerous condition and needs to be pulled down.

3. It is stated that the 'D' wing is a separate building on the northern side whereas wings 'A', 'B' and 'C' are at the southern side of Chandavarkar Road. The notice dated 22nd March, 2014 issued under Section 354 calls upon the society to pull down the ground plus three upper floors of 'A', 'B' and 'C' wings and ground plus four upper floors of 'D' wing with RCC frame structure within 30 days. Now structural audit reports have been submitted and the matter was referred to the Technical Advisory Committee. The Technical Advisory Committee says that wings 'A' to 'C' are of "C-2 B" category, namely, repairs without evacuation.

4. These statements, which have been made in this affidavit as also in the report, are thus accepted by us as undertakings given to this Court.

5. In view thereof, the notice dated 22nd March, 2014 and action under Section 354 of the Mumbai Municipal Corporation Act, 1888 presently does not survive. We grant liberty to the Municipal Corporation to take immediate steps should the repairs suggested by the Consultant are not carried out within the time frame.

6. Mr. Mahesh Dalvi, who is the Secretary of the Society, is present in Court. He has identified himself. He says that within

fifteen days from today, a general body meeting will be convened and appropriate decision with regard to the repairs in terms of the report will be taken. Thereafter the repairs will be carried out expeditiously. The repairs be carried out latest by 31st March, 2020.

7. As far as wing 'D' is concerned, that was inspected, but it is stated in the affidavit filed by the Municipal Corporation that the structure is identified by the Municipal Corporation as "C-1" category. That is, according to the Municipal Corporation, required to be pulled down.

8. However, today a report is submitted by Mr.Dalvi, the Secretary of the society, insofar as 'D' wing is concerned. It is taken on record and marked 'X' for identification. It is stated in this report that 'D' wing is also repairable. If that be so, even 'D' wing should be repaired within the time stipulated above.

9. Should the repairs not be carried out within this period or the building deteriorating because no commencement of the repair work is undertaken, our order does not prevent the Municipal Corporation from taking such steps as are permissible in law.

10. The writ petition is disposed of in these terms. There will be no order as to costs.

(SANDEEP K. SHINDE, J.)

(S.C.DHARMADHIKARI, J.)