

Anwar Hasan Mansuri and Ors. ... Petitioners
versus
The Municipal Corporation of
Greater Mumbai and Ors. ... Respondents

Ms.Rupali Adhate for MCGM.

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

P.C. :-

1. This writ petition was listed for directions for it is one in the series of writ petitions pending in this Court, challenging the notices under Section 354 of the Mumbai Municipal Corporation Act, 1888 (for short, “the MMC Act”). Added to the pendency is the factum of an ad-interim order operating against the Municipal Corporation restraining it from proceeding to implement and enforce its notices.

2. With the consent of the advocate for the petitioners, we have listed this petition for admission today. We have heard him

on the point of admission and continuation of the ad-interim order.

3. There is no dispute that the notices issued and challenged in this writ petition filed on 25th May, 2015 are dated 14th July, 2012 and 22nd May, 2015.

4. This Court was persuaded to pass an ad-interim order in this writ petition on 8th June, 2015. That reads as under :-

“ Not on board. Taken on board.

. Heard the learned counsel appearing for the Petitioners and the learned counsel appearing for the Respondent Nos.1 to 3. Petition shall be listed on the scheduled date which is 22nd June, 2015. We direct that till the next date, action of demolition shall not be initiated on the basis of the impugned notice dated 14th July, 2012, subject to condition of the Petitioners filing an undertaking on oath before the Court within a period of one week from today stating therein that in the event the building in question or any part thereof collapses and any loss is caused to any third party, the Petitioners will be responsible for such loss. The undertaking to state that they will occupy the premises at their own risk. If such undertaking is not filed within a period of one week from today, ad-interim relief shall stand vacated without further reference to the Court.”

5. Pertinently, the order does not record any *prima facie* satisfaction, particularly demanded by law, that the notices are ex-facie arbitrary, perverse or vitiated by *mala fides*. It also does not record any prima facie finding that the Municipal Corporation is so unreasonable and unfair that it is seeking to bring down or

demolish the building which is neither dilapidated, old or in a ruinous condition and likely to fall.

6. Far from this, on a reading of this subject notice, we find that the Municipal Corporation repeatedly informed the petitioners that this building is not sound for human occupation. At page 31 of the paper-book, there is a copy of the notice dated 14th July, 2012. That notice reads as under:-

“MUNICIPAL CORPORATION OF GREATER MUMBAI
Notice under Section 354 of the Mumbai Municipal Corporation Act,
Notice No.HW/JEII/354/20/BF/06-2012-2013
14/7/2012

Office of the
Asst. Commissioner,
H/West Ward, St.Martin's Road,
Bandra (West), Mumbai - 400 050
Date :

To,
Owner/Occupier
Mr.Anwar Mansoori
Mr.Afjal Mansoori
Mr.Yusuf Mansoori
Mr.Badshah Mansoori
Mr.Abdul Mansoori
Rabiya Mansion, 44/A, Chimbai Rd.,
Bandra (W), Mumbai -50.

WHEREAS it appears to me that the certain structure to with a portion of the building on premises No.Rabiya Mansion, 44/A, Chimbai Rd., Bandra (W) of which you are the owner/occupier of building which is in a ruinous condition likely to fall and dangerous to any person occupying resorting to or passing by same. I hereby require you under Section 354 of the Mumbai Municipal Corporation Act to repair.

- 1) Removing and replastering with rich mortar wherever necessary.
- 2) Replacing drainage and rain water pipes throughout

wherever necessary.

- 3) Tiling and flooring wherever necessary.
- 4) Electrification, plumbing wherever necessary.
- 5) Remove Rank vegetation wherever necessary.
- 6) To arrest the leakage from 1st floor level.
- 7) To repair the broken manglore tiles wherever necessary.
- 8) Necessary propping should be done throughout and wherever necessary.
- 9) Take all the precautionary measures to avoid any collapsed mishap of building which will endanger the life of human being.
- 10) To remove extreme dangerous hanging portion of the structure so as to avoid untoward accident/mishap.
- 11) To safeguard the property from any mishap/accident which will endanger the life of human being. You will solely held responsible for any mishap/collapse/accident happens which will endanger the life of human being.
- 12) To repair the RCC members such as columns, beams, slab etc.

(All above works shall be carried out under the supervision of Licensed Structural Engineer)

And to prevent all cause of danger therefore, I further hereby require you under the aforesaid Section of the Mumbai Municipal Corporation Act. Forthwith before proceeding to pull down and secure the said structure to set up a proper and sufficient board of fence for the protection of passer-by and other persons. I give you Notice that if within 30 days from the service or receipt here of his 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 provisions of section 489 of the said Act take such measure cause such work to be executed on 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 given due effect to the requisition and you will be liable for the expenses thereof which will be recovered from you in the manner provided by Section of the said Act before appropriate forum/court of law. No portion of the structure within the scope of Section 342 of the said Municipal Corporation Act other then the work which you are expressly required by this Notice to do be made or done without previously giving notice thereof as required by Section 342 aforesaid.

Sd/-

Asst.Eng. (B & F) H/West Ward."

7. After the Municipal Corporation informed the petitioners to carry out necessary repair works, but finding that the same was not carried out, it issued a notice, copy of which is at page 33 of the paper-book dated 22nd May, 2015. It refers the prior notice and also an inspection of site carried out on 19th May, 2015. It was observed that the petitioners before us were still occupying the structure/building. The additions and alterations made are also referred in this notice. Pertinently, this is done to the old and dilapidated structure.

8. An affidavit has been filed by the Municipal Corporation, wherein, it says that this building is located at Bandra (West). There was a complaint received on 20th January, 2012 from one Carmeline Carol S. D'Souza residing at ground floor, 44, Rabiya Mansion, Chimbai Road, Bandra (West), Mumbai 50. On 13th July, 2012, the inspection team of the Mumbai Municipal Corporation inspected this building and it found it to be dilapidated and requiring urgent repairs. That is how the subject notice was issued to five landlords on 14th July, 2012. Once these persons failed to comply with the notices, then, the Municipal Corporation had no choice, but to take further action. It issued a warning notice dated 22nd March, 2014 to both-the owners and the occupiers. In fact, this warning was a final one calling upon the

occupiers to comply with the notices issued, failing which, appropriate legal action would be taken. Yet, when the visit was carried out on 21st August, 2014 and for taking measurements, it was discovered that the petitioners, instead of complying with the notices and the warning, continued to occupy the building. The inspection of 19th May, 2015 revealed that the structure was still occupied. Therefore, on 22nd May, 2015, the final call was issued. The owners/tenants failed to carry out any structural audit. No structural audit report was ever submitted in terms of Section 353-B of the MMC Act. The structural audit is to be carried out mandatorily so as to certify the stability of the structure. On failure to carry out such audit, but thereafter when the notices are issued, rushing to the structural engineers is a routine feature which we have been witnessing from the month of June, 2019. This reason we term it as such is because while challenging the notices issued under Section 354 of the MMC Act, some grounds of challenge have to be invented. At that stage, the occupiers of the building rush to a structural engineer and try to obtain a certificate or a report or a recommendation from him or her to the effect that the structure can be saved by carrying out repairs. On noticing that such reports have been obtained by the occupants, the owners, in turn, rush to another structural engineer, who makes a directly contrary recommendation. He

says that structure is highly dilapidated, old, ruinous and likely to fall. It is in these circumstances that conflicting reports have to be scrutinised by the Technical Advisory Committee. In the instant case, there has been no attempt of this nature. Far from it, there has been no compliance with the notice, copy of which we have referred and perused with the assistance of the petitioners' advocate. The contents thereof have also been reproduced by us.

9. Mr.Srivastava was unable to point out anything from the grounds of this petition which would suggest that the Municipal Corporation has issued these notices at the behest of some interested party or in collusion with some interested parties. Far from it, the petition clearly projects that there are tenants on the ground floor. The petitioners are in possession of the first floor of this building. Smt.Rabiya Hasan Mansuri purchased this building from the earlier owner on 24th October, 1980. A tenancy was created in respect of one flat on the ground floor admeasuring about 475 sq.ft. On the other hand, we have found that these petitioners and respondent Nos.3 and 4 are co-owners. It is claimed that they are joint owners. We do not know how paragraphs 7 to 11 of this petition would enable us to hold that the Municipal Corporation has misdirected itself in issuing the subject notices. In fact, the petitioners concede that after

receiving the subject impugned notices, they made their best efforts to repair the building. They contacted a developer to demolish the building and redevelop the property. However, they blame Carmeline Carol S. D'Souza alias Dharmai, who has taken assistance of one social worker and obstructed the petitioners in carrying out the repairs or to bring down the building. She is not ready to co-operate with the petitioners. She is demanding additional area in a permanent alternate accommodation, which would be constructed at the site. It is in these circumstances that the electricity and water supply was disconnected on 3rd October, 2018. That has not deterred this lady from occupying the ground floor. That is how the petitioners seek to resist the impugned notices. Therefore, there is no threat and of the nature projected before us. That matter is not referred to the Technical Advisory Committee is a faint and feeble attempt to put up some sort of challenge, however weak and without substance. The requirement of referring the matter to the Technical Advisory Committee has to be fulfilled only when there are conflicting reports and of the experts in the field. There cannot be any complaint when there is neither an attempt to repair the building nor to have a structural stability certificate nor any opinion which would say that the structure is sound and safe, but only requires repairs. In such circumstances, the bald assertions in

paragraphs 14 to 18 take the case of the petitioners nowhere. We do not think that the request, as is now pressed, to refer the matter to the Technical Advisory Committee, should be considered. There is no material to hold that the matter was required to be referred to the Technical Advisory Committee and obtain a categorization of the building. In para 20, we find that some complaint is made about the occupant of the ground floor.

10. The grounds in the petition also do not make out the case of total perversity, arbitrariness, unreasonableness, much less mala fides in issuing the subject notices and calling upon the petitioners to vacate the building and enable the Municipal Corporation to pull down the structure, which is likely to collapse any time. The petitioners and the occupants could have brought down the structure on their own, but they did nothing.

11. In such circumstances, there is no case made out for continuation of the ad-interim order dated 8th June, 2015. It is vacated forthwith. The writ petition is dismissed. There would be no order as to costs.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)