

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

WRIT PETITION NO.2382 OF 2018

Madhu Dilip Palrecha & Others

.... Petitioners

Vs.

The Municipal Corporation of
Greater Mumbai & Others

.... Respondents

Mr. Ramanand R. Sharma with Mr. Satya Das
for the Petitioners.

Ms Vandana Mahadik for Respondent Nos.1 to 3.

Mr. Kaushal Thakker for Respondent No.4.

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

DATE : APRIL 24, 2019

P.C:

1. After this writ petition was placed before us and a serious grievance was made that in the garb of an ad-interim order dated 6-6-2018 and modified further, the petitioners have not vacated the tenements/premises in their possession and in a 100 year old building, we took up the petition, for admission, by consent of both sides.

2. On the earlier occasion and today, we heard Mr. R.R. Sharma, appearing for the petitioners and we have also heard respondent No.4 through its Advocate.

3. The 4th respondent to this petition is a Private Limited Company carrying on business as Builder & Developer. It says that it is the owner of the building in question. That is 100 years old.

4 When the writ petition was heard on the earlier occasion and today, we enquired from Mr. Sharma as to whether the petitioners, by keeping their pleas regarding right, title and interest in the immovable property intact and without prejudice to the contentions that they have raised already, would vacate the building so as to ensure smooth compliance with the Notice under Section 354 of the Mumbai Municipal Corporation Act, 1888 (**“the MMC Act”** for short) and impugned in the writ petition, on instructions Mr. Sharma says that they are willing to vacate but there are two or three issues which raise serious concerns.

5. The first issue is that, the landlord/4th respondent has filed Suits in the Court of Small Causes against the

occupants (40 in number). He has also filed separate Suits against some of the occupants, including some of the petitioners alleging that they have either sub-let the premises, changed the user, etc., and these Suits are pending. Secondly, if the petitioners vacate the premises and handover vacant and peaceful possession thereof so as to enable the demolition of the building, there is no assurance that there will be an end to the litigation in the Court of Small Causes or otherwise and finally, whether respondent No.4 will at all implement a scheme of redevelopment particularly when no such scheme has been placed on the record.

6. The 4th respondent to this petition says, that it has indeed filed Suits and they are pending. However, the counsel for the 4th respondent invites our attention to The Maharashtra Rent Control Act, 1999 and some of its salient features to urge that in the garb of challenge to a Notice under Section 354 of the MMC Act, the petitioners desire to put an end to the Suits and that is not permissible in law.

7. After hearing both sides, we find that there is no substance in the challenge to the Notice under Section 354 of the MMC Act. That Notice is issued upon the necessary satisfaction and in terms of the legal provision. We do not find the satisfaction to be vitiated in law. Meaning thereby, it is not vitiated by errors of law apparent on the face of the record or perversity, leave alone *mala fides*. In such circumstances, we uphold the Notice and reject the challenge to the legality and validity thereof.

8. There is a complete answer to what Mr. Sharma has brought to our notice and in the Rent Control Legislation itself, for in the Rent Control Legislation there is a complete scheme and in the event the landlord applies for a Decree of possession against the tenant, it will be possible to pass an order in his favour on the permissible grounds, *inter alia*, for complying with the Notice issued by the Municipal or local body. If the landlord therefore desires to bring down or demolish the existing building and reconstruct or redevelop the property, then, preserving all the rights of the tenants the Court of Small

Causes, in this case, can be requested to pass a Decree. That Decree takes care of everything, including the redevelopment scheme and its details. The Court of Small Causes is not powerless and while passing the Decree it can stipulate the outer limit for the construction to be undertaken and completed. The scheme of redevelopment with all the details will have to be placed on record of the proceedings before the Court of Small Causes whereupon it will issue appropriate directions. Thus, this is not a case where the petitioners are remediless or would not have any opportunity to raise their grievances and apprehensions. All of them can approach the Court of Small Causes and defend the Suits and equally place their versions before that Court. We do not think that the petitioners are remediless, for the amendment to Section 354 of the MMC Act keeps intact their rights and contentions. Sub-section (5) of Section 354 is now in place. That guarantees preservation and protection of the rights of occupants which are otherwise available to them and issuance of Notice under Section 354 of the MMC Act would not prejudice the same. Thus, there is a

complete answer to the apprehensions expressed before us. Now what remains is the willingness of the petitioners to handover vacant and peaceful possession of the premises so that there is compliance with the Notice. The 100 year old building existing at the site and in a dilapidated state presents its own difficulties. It is a risk and threat to those occupying and those passing by or residing in the neighbourhood. The building should not collapse and that is the real concern of this Court. The impending monsoon should not result in loss of human life and property, if this building collapses at any time. Mr. Sharma prays for six (6) months' time to vacate the premises.

9. We do not think that we should grant this much time, for already more than ten (10) months have been lost after the intervention of this Court and its ad-interim order dated 6-6-2018.

10. We grant to the petitioners three (3) months' time to vacate the premises. The time shall run from today. In the event the premises are not vacated by the petitioners and they do not

handover vacant and peaceful possession of the same for compliance with the statutory Notice, then, at the end or expiry of this period the Municipal Corporation can step in. The respondent Nos.1 to 3 can then enforce and implement their Notice by taking coercive measures. They can also request the nearest police station to render the requisite assistance. We have no doubt that in the event the petitioners refuse to comply with the statements made before us or the directions issued by this Court, then, in addition to initiation of proceedings under the Contempt of Courts Act, 1971, additionally, the 4th respondent as also respondent Nos.1 to 3 can request the nearest police station to render the necessary assistance to the Municipal officials to enforce and implement the subject-Notice. We have no doubt that such assistance would then be rendered.

11. We dispose of this writ petition by clarifying that we have only upheld the legality and validity of the Notice under Section 354 of the MMC Act. Our observations should be seen only in that light and this order cannot be construed as an expression of opinion on the merits of the controversy and

particularly in relation to the right, title and interest in the immovable property. We have also not expressed any opinion on the contested issues, particularly of change of user or sub-letting and all contentions of the petitioners, as also the other occupants, in the pending legal proceedings, are kept open.

12. The writ petition is disposed of in these terms. The ad-interim order passed on 6-6-2018 shall operate for a period of three (3) months and would automatically come to an end thereafter.

13. Till the petitioners vacate the premises or are evicted in terms of our order and direction, the undertakings given by them to this Court would continue to be operative. The petitioners shall not carry out any repairs nor shall they do anything to the property/building in the garb of repairs. Any repair permission granted to the petitioners by the Municipal Corporation cannot be enforced nor can the petitioners act in furtherance of the same. Similarly, the petitioners are restrained from creating any third party rights or inducting any third party

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in the premises until the order passed by us in this petition is complied with.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)