

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

WRIT PETITION NO. 2015 OF 2019

Dhangouri Harikishan Mistry and Ors.	}	Petitioners
versus		
The Municipal Corporation of Greater Mumbai and Ors.	}	Respondents

Mr.V.K.Dubey i/b. M/s.V.K.Dubey Associates for the
petitioners.

Ms.Rupali Adhate for the Municipal Corporation.

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

DATED :- JULY 5, 2019

P.C. :-

1. This writ petition was mentioned in the morning session and urgent circulation was sought on the ground that by the impugned communication, styled as a notice, the petitioners have been informed that there would be disconnection of the water and electricity supply and the building will be brought down in pursuance of the notice under section 354 of the Mumbai Municipal Corporation Act, 1888. This notice at page 100 of the paper book dated 24th June, 2019 reads as under:-

“MUNICIPAL CORPORATION OF GREATER MUMBAI

No. ACPN/ /AEB&F dt.

Office of the Asstt. Commissioner
P/North Ward Office
Liberty Garden, Mamletdarwadi,
Malad (West), Mumbai-400064

To,
Owner/Occupier,
Shri/Smt. Jaising Jagtap
Pragati Niwas, P.G.Road, Bhandarwada,
Malad (W), Mumbai-400 064

Sub:- Dilapidated condition of the building
known as “Pragati Niwas” situated at
P.G.Road, Bhandarwada, Malad (W),
Mumbai-400 064

Ref:- 1) This office notice u/s 354 of MMC
Act under no. ACPN/354/565/BF-
42/2015 dt.17.06.2015.

2) B.C.C.C. Suit no.1969 of 2015

3) TAC meeting held on 27.11.2015

Sir,

With reference to the above, this is to inform you here that, Monsoon is approaching very fast. The subject building known as Pragati Niwas situated at P.G.Road, Bhandarwada, Malad (W), Mumbai-400 064 has already been declared a dangerous building.

Therefore, in order to avoid any untoward incident, this office has decided to go for disconnection of utilities and demolish of the said building under reference as the suit bearing no. 1969 of 2015 is been vacated as informed to this office by Legal department. This office is at liberty to proceed further action in the matter.

Hence, you are hereby informed to submit your document in respect of the above referred suit no.1969 of 2015 i.e. if you approached to Hon'ble High Court and obtained any restraining order in the matter finally communicate the same within 03 days from the receipt of said letter to this office. Failing which it will be

considered that you don't have any order to restrain from the demolition of the above said building and the said building will be demolished by this office without further intimation.

Asstt. Engineer (B&F)-IV, P/North"

2. A perusal of this notice itself indicates that there was a prior communication/ notice under the same provision, issued as far back as on 17th June, 2015. That notice was challenged by instituting a suit in the City Civil Court being Suit No. 1969 of 2015. Concededly, there was a protective order passed in that suit and which now stands vacated.

3. Once the suit is without any prohibitory order or injunction restraining the Municipal Corporation from performing its statutory obligation and duty, then, we are not obliged to entertain any challenge today by way of this writ petition. From 17th June, 2015, the petitioners were aware that the building is old and is in a dilapidated condition. That it requires structural repairs. That the learned advocate now argues that repairs have been carried out is neither here nor there. When the notice demands structural repairs to be carried out and points out the defects in the structure, then, it is no use saying that the landlord/ owner has ignored the building and the tenants have carried out repairs. Mere tentable repairs are not of use and the Technical Advisory Committee of the Municipal Corporation has

categorised the building as C-1. In fact, the conclusion of the Municipal Corporation, based on this Technical Advisory Committee Report, is that in November, 2015, a meeting of this committee was convened, which was attended by the structural consultants of the petitioners as also the owners. After the opinions were placed and the consultants were heard, the committee observed that there is vegetation on the building, the chajjas, columns, beams are in worst condition, one column is found buckled and the backside of the building is in dilapidated condition. Reinforcement is exposed and corroded. Yet, 22 persons are occupying the building. Overall, the building is in a dilapidated condition and needs to be evacuated and demolished. All the test results referred in the committee's conclusion show that the required standards and norms are not fulfilled.

4. It is very clear, therefore, that the petitioners have not done anything to save the structure from being demolished in pursuance of the notice referred by us. They have, for four years, engaged not only the owners but equally the Municipal Corporation in litigation in the City Civil Court. The Municipal Corporation was prevented from enforcing and implementing its own notice. Now that coercive steps have been proposed, namely, disconnection of water and electricity supply that this writ

petition is filed. We find that such writ petitions are gross abuse of the process of this court. We cannot set aside the notice issued four years back on the ground that the subjective satisfaction is vitiated. It is neither vitiated by perversity nor by arbitrariness, leave alone *mala fides* warranting our interference in writ jurisdiction.

5. The writ petition is devoid of merits and it is dismissed. There would be no order as to costs.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)