

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

**WRIT PETITION NO. 2190 OF 2015
WITH
NOTICE OF MOTION NO. 366 OF 2017**

Damyanti Ratilal Pujara and Ors. }	Petitioners
versus	
Mumbai Municipal Corporation }	
and Ors. }	Respondents

Ms.Damyanti R. Pujara-petitioner no.1 in-person.

Ms.Vandana Mahadik for the Municipal Corporation.

Mr.Anilkumar Patil with Mr.Smit Nagda for
respondent no.4.

Mr.Annil Jadhav-AE (B&F), M/W present.

Mr.Ravindra K. Ghatge SE (B&F) M/W present.

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

DATED :- OCTOBER 16, 2019

P.C. :-

1. We have heard the party in person assisted by her daughter.
We have also heard Ms.Mahadik appearing for respondent no.1-
Municipal Corporation of Greater Mumbai and Mr.Anilkumar Patil
appearing for respondent no.4-society.

2. The challenge in this writ petition is to a notice issued by the
Municipal Corporation of Greater Mumbai under section 354 of the

Mumbai Municipal Corporation Act, 1888, copy of which is at page 76 of the paper book. That notice reads as under:-

BRIHANMUMBAI MAHANAGARPALIKA

No.ACM/W/OD-836 B&F of 19/01/2015
Office of the Asstt.Commissioner,
M/West Ward 'M/W' Ward Mun. Office Bldg.,
Sharadbhau Acharya Marg, Chembur,
Mumbai-400 071

**NOTICE UNDER SECTION 354 OF THE MUMBAI
MUNICIPAL
CORPORATION ACT, 1888**

To,	To,	To,
1) Shri V. Vishwanathan- Chairman, Vasudha Co- Op.Hsg. Soc. Ltd., Plot No.D-2/403, Diamond Garden, 7 th Cross Road, Chembur, Mumbai - 71	2) Shri S.B.Das- Secretary, Vasudha Co- Op.Hsg.Soc. Ltd., Plot No.D-2/403, Diamond Garden, 7 th Cross Road, Chembur, Mumbai-71	3) Vasudha Co- Op.Hsg.Soc. Ltd., Plot No.D-2/403, Diamond Garden, 7 th Cross Road, Chembur, Mumbai -71

WHEREAS it appears to M.C.G.M., as per the remarks of Dy.Ch.E.(BP) E.S. vide no. Dy.Ch.E./B.P./13259/E.S. dt. 15.12.2014, that the building/Structure known as "**Vasudha Co.Op.Hsg.Soc. Ltd., Plot no.D-2/403, Diamond Garden, 7th Cross Road, Chembur, Mumbai-71**", of which you are the Chairman/Secretary, is in a ruinous condition, likely to fall and is dangerous to any person occupying, resorting to, or passing by the same.

And also, as per this office assessment record of Assistant Assessor & Collector M/West ward, the ruinous building is Gr.+ 2 upper storied with four flats at ground and first floor each and two flats at second floor (total of 10 flats). The individual area of each flat as per the office AAC M/West record is annexed herewith.

And also as per the latest amended approved plans under no CE/5041/BPES/AM dt 03.05.2006, certain

portion at second floor (shown as hatched) comprising living room with balcony and bed room for flat no (9) and (10) are regularized. Without prejudice to any pending court cases, the carpet area of the ten (10) individual existing tenements {flat nos.11, 12, 13, 14 although shown in drawing are not constructed and not existing at site}, in this ruinous structure will be reckoned as shown in the drawing CE/5041/BPES/AM/dt 03.05.2006.

I hereby require you under section 354 of the Mumbai Municipal Corporation Act, 1888 to **Pull down/Demolish** the bldg under reference i.e. "Vasudha Co.Op.Hsg. Soc. Ltd., Plot no. D-2/403, Diamond Garden, 7th Cross Road, Chembur, Mumbai-71" within **30(Thirty) days** of receipt of this notice (sketch overleaf).

And to prevent all cause of danger there from I further hereby require you, under the aforesaid section of the Mumbai Municipal Corporation Act, to set up a proper and sufficient board or fence for the protection of passersby and other persons. I give you notice that, I may thereafter pursuant to the provision of section 489 of the said Act take such measures or cause such work to be executed or such thing to be done as shall be in my opinion be necessary for giving due effect to this requisition and you will be liable for the expenses thereof which will be recovered from you in the manner provided by Section 491 of the said Act.

No reconstruction of the ruinous structure should be carried out without prior approval from office of Dy.Ch.E. (BP) E.S. and the area of the existing tenements is protected to the extent shown in the approved plan under no CE/5041/BPES/AM dt 03.05.2006.

Sd/-

Asst.Commissioner,M-West Ward"

3. Thereafter, there is a communication of 23rd January, 2015, which is a continuation to the notice. That clarifies the position in relation to flat no.9 of the petitioners. Even that communication is reproduced by us hereinbelow to independently appreciate the challenge raised in the writ petition:-

MUNICIPAL CORPORATION OF GREATER MUMBAI
No.A.C. 'M/W'/OD/845/B&F dtd. 23.01.2015

Office of : Assistant Municipal
 Commissioner M/West Ward
 M Ward Office Building
 Sharadbhau Acharya Marg,
 Chembur, Mumbai - 400 071
 Tel : 25225000 (Ext.101)
Fax : 25270148

To,

To,

To,

1) Shri V. 1) Shri S.B.Das- 3) Vasudha Co- Vishwanathan- Secretary, Op.Hsg. Soc. Ltd., Chairman, Vasudha Co- Plot No.D-2/403, Vasudha Co- Op.Hsg.Soc. Diamond Garden, Op.Hsg. Soc. Ltd., Ltd., Plot No.D- 7 th Cross Road, Plot No.D-2/403, 2/403, Diamond Chembur, Diamond Garden, Garden, 7 th Cross Mumbai -71 7 th Cross Road, Road, Chembur, Chembur, Mumbai-71 Mumbai - 71
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Sub : This office notice u/s.354 of Mumbai Municipal Corporation Act, 1888 issued U/ No.ACM/ W/OD/836/B&F dt.19.01.2015

Ref : Personal representation of Smt.D.R.Pujara, made to this office on different Monday & Friday Public Grievance timings regarding flat No.9 at 2nd floor of your society.

In further continuation to this office notice u/s.354 (as mentioned in subject above), it is further clarified that the carpet area of occupant of flat No.9, Smt.D.R.Pujara should be taken as per Pink shaded portion in the accompanied plan bearing No.CE/ 5041/ BPES/AM dt.03.05.2006.

Simultaneously, this office copy of tabulated ward report dtd.31.10.2006 which provides the details of the area in her possession is annexed herewith. Interpreting this approved plan of MCGM (by office of EEBP(ES) U/No.CE/5041/BPES/AM), it is reiterated that there is no any terrace at 2nd floor.

The previously existing terrace adjoining to flat No.9 at 2nd floor has been regularised as per the building plan U/No.CE/5041/BPES/AM dt.03.05.2006 and said regularised terrace area has been merged into the flat No.9 at 2nd floor of your society.

Sd/-

Asstt.Commissioner, M/West Ward

4. The petitioners claim that there is a co-operative housing society registered under the Maharashtra Co-operative Societies Act, 1960. That is respondent no.4. The building in question belongs to this co-operative housing society. The petitioners before this court claim to be joint owners of flat no.9 on second floor. Pertinently, the petitioners are members of the fourth respondent society. We are not, in the lis, concerned with the issue of membership and the other issue pertaining to an addition and alteration in the flat and some unauthorised construction alleged to have been carried out therein. That is a distinct issue and we do not think that it is relevant for the purpose of the present petition.

5. The petitioners impugn the notice, but without elaborating the ground of challenge. The notice is issued in respect of the whole building. That is identified as dilapidated, dangerous and in ruinous condition. That how it is in such a state is set out in the notice itself. The notice is issued on a satisfaction of the Municipal Commissioner and his delegates in terms of the legal provisions. That satisfaction is after verification, scrutiny and inspection at

site, by which the Municipal Commissioner satisfies himself that the structure or the building is not only old and dilapidated, but is unsafe for human habitation because it is in ruinous condition. If it collapses, it will not only endanger the life of the persons residing therein, but those residing in neighbourhood and passersby also.

6. The writ petition does not set out anything in relation to this satisfaction of the municipal commissioner, but purports to raise a completely distinct challenge. That is in relation to the dispute between the co-operative housing society and the petitioners as also the Municipal Corporation, by which, the Municipal Corporation is proceeding to deal with the unauthorised construction activity. That is in relation to and within the flat. There may be disputes pending and equally legal proceedings, by which the petitioners' occupation of the flat is protected, but by occupation and possession of the flat or the pendency of legal proceedings in relation to the unauthorised construction therein, the interim protection granted either by the trial court or this court, all this is not enough to resist the notice in question.

7. The petitioners admit that the building has been certified as C-1 category. An audit was carried out on 22nd July, 2014. That audit may have been carried out at the behest of the co-operative

housing society, nonetheless, the building has been categorised as C-1 category. It is very clear from a perusal of the writ petition that the petitioners, in seeking to protect their occupation and possession of the flat, their rights in relation thereto, are resisting the notice by a vague and general allegation that if the building is brought down, all evidences and proofs of the injustice that has been caused in the wrongfully approved plans of 7th July, 2005 and 3rd May, 2006 would be destroyed.

8. We have made it clear to the party appearing in person, she being a senior citizen, that our order and conclusion in this writ petition will not affect the controversy that is pending or dealt with in relation to the flat and the construction therein. The flat, including the right to possess and occupy the same, is independent and has nothing to do with the notice. Even if the building is brought down, nothing is lost, for the petitioners can assert their right, title and interest in the immovable property and equally the right to occupy and possess the independent unit should the building be redeveloped after the existing structure is pulled down.

9. In the writ petition at page 14, it is stated that there are three structural audit reports, two of September, 2010 and one of July, 2013 certifying the building as repairable, but only in one report of July, 2014, the society got the building certified as falling

in C-1 category. This is to take advantage of some orders of this court and the guidelines issued in that regard. However, the writ petition itself proceeds to say that the structural audit was carried out after the building completed the necessary number of years. In other words, its age and of more than 30 years rendered the building as fit for occupation only after the structural audit is carried out. Its safety and stability has to be certified mandatorily under the provisions of section 353B of the Mumbai Municipal Corporation Act, 1888. That section benchmarks the age of the buildings and if they are 30 years or more of age, they are stated to be fit for human occupation and safe as such only after the audit is carried out. The audit has to be carried out in terms of the legal provisions and within the time specified and if not, then, it is the Municipal Commissioner who can ensure such an audit is carried out or if there is no co-operation, he can come to an independent conclusion. Once again, we find that the reliance placed on certain guidelines contained in this court's order would not be of any assistance. That order and further orders of this court have been elaborately considered and dealt with at least in 10 to 12 judgments rendered by this very Bench from June, 2019. This court, in its judgments, has broadly summarised the legal position and after it has arrived at a conclusion that the satisfaction of the Municipal Commissioner is neither vitiated simply because after

the issuance of the notice, the building has not collapsed on its own or should that notice remained unchallenged, if the building is pulled down by the municipal authorities. In any of these circumstances, the independent rights of the occupants and parties in possession remain unaffected. Therefore, there has to be specific material placed on record and not just vague allegations which would enable this court to interfere in its writ jurisdiction with the satisfaction of the Commissioner. Once there is no material demonstrating perversity or manifest illegalities, then, this court does not function as a court of appeal. It cannot interfere with the satisfaction of the Municipal Commissioner merely because in its opinion, some other view is possible or a lenient view can be taken because the occupants are senior citizens. The satisfaction is to ensure that the old and dilapidated structures in the city of Mumbai and suburbs do not pose a health hazard. The larger public interest demands the statutory intervention by the Commissioner.

10. We have been noticing that routinely people come to this court even though the right to challenge such notices does not vest in them. In the instant case, we find that the petitioner is a member of respondent no.4-society. The society has expressly and in clearest terms stated before us that it supports the notice.

Though this position is emerging from the record itself, for some reasons, this writ petition was moved by the parties before this court and simply relying on an order passed in First Appeal No.812 of 2012, which order is stated to be that of maintaining status-quo, this court was persuaded not to allow the Municipal Corporation to enforce and implement the subject notice. We repeatedly asked the party in person how could a notice under section 354 of the Mumbai Municipal Corporation Act, 1888 be stayed because there is a dispute pending in relation to Flat No.9. The first appeal relates to that flat. May be the Municipal Corporation is a party to the first appeal, but that by itself does not mean that the Municipal Corporation cannot carry out independent audit of the structure as a whole in order to judge its stability and safety. More so, when it has crossed the benchmark of 30 years. In the instant case, this fact is not disputed in the writ petition. The petitioners are the only persons who are resisting the notice. All others have vacated the structure. None of them feel, including the society, that this structure can last and can be occupied safely. In fact, we have, from the record itself, gathered that the Municipal Corporation was constrained to invoke this provision in larger public interest.

11. In the affidavit in reply, it is clarified that the building under reference is in dilapidated condition. Several cracks are observed

at the outer side of the column. The vegetation growth has been observed at various places. External plaster peeled off at the north side of the building. The RCC outer columns are in deteriorated condition. Cracks have been also observed at the mid-landing column of staircase. That in monsoon season, this building is likely to collapse is then sought to be proved by relying on the photographs at Exhibit '1' to the affidavit of the Municipal Corporation. In fact, the Municipal Corporation is praying for vacating the order of status-quo, as the structure poses a serious threat to the life of the occupants and those residing in the neighbourhood and passers-by. There is a clear indication as to why the notice has been issued. The columns have cracked. This is not some superficial damage or some cracks which can be set right or repaired. This shows that the structure itself is dilapidated. That it is more than 30 years old and that it has not been regularly maintained, possibly on account of internal dispute, is also apparent. In these circumstances, the petitioner may have her own version with regard to the issuance of notice by the Municipal Corporation, but that version is essentially premised on her dispute with the society. The petitioners, in the garb of that dispute, are not allowing the Municipal Corporation to implement and enforce the notice. The petitioners are no experts. The petitioners have not at all bothered to carry out any maintenance

or regular repair works to the structure. Petitioner no.1 is only worried about her flat. She only looks after and possibly maintains her flat. She does not bother about the state of the building. She may have her version, but one cannot conclude that the municipal action is perverse or mala fide only on this one sided version of the petitioner. The petitioner says candidly that there is an observation in the report that the original supporting wooden members in the section pertaining to staircase, passage and lift have lost their bearing, but that is untrue because there is no wooden supporting members at all in the structure. The report states staircase is damaged severely, but there is no substantiation/explanation of the damage. The report makes critical observation that the rear side of the building at ground floor has collapsed partially and that partial collapse of brick work is at the rear side of the building. However, the petitioner says that this is blatant misrepresentation because there has been no collapse of any part of the building. The petitioner may say that the structure is sound and safe, but, equally, that is without any substantiation. The petitioner cannot speak about the structure simply because the petitioner, with others, is a member of a co-operative housing society. It is the co-operative housing society which could have resisted the notice by pointing out that from contributions made by the members and particularly the corpus in

its repair fund, it has carried out regular repair and maintenance works. That there is evidence of such work being carried out. That the repair work would enable the structure to last more than 30 years and because it is more than 30 years old does not mean that it is required to be brought down. However, the Commissioner's satisfaction is neither challenged nor has the society brought any material on record of the nature referred above. In fact, the structural auditor's report is sought to be contested or its contents disputed by the petitioner. The petitioner is aware of the legal provision and the requirement of the structural audit. She has also been guarded in her statement for she says that the Municipal Corporation has even informed the society that the July, 2014 report of the structural auditor Nayan Dholakia does not meet the Municipal Corporation's Proforma 'B' requirements. Therefore, the mala fides are inferred by her and despite such letter, the Municipal officers have addressed a notice and this is a collusion, according to the petitioner with the society. However, she does not bother to refer to the inspections and inspection reports of the municipal engineers. She does not bother about the categorisation of the building as C-1. There is no dispute that the building is deteriorated by passage of time. She has also not disputed as to how the columns and other portions of the building have developed cracks and the building is, therefore,

rendered unsafe for human habitation. She does not dispute that others have vacated the building. To our mind, therefore, at the instance of such a petitioner, we cannot prevent the Municipal Corporation from implementing and enforcing the notice.

12. The petitioners have not disputed the fact that the required repair and maintenance work has not been carried out. The building is thus neglected by all, including the petitioners. If such are the state of affairs, they can hardly resist, leave alone challenge the notice issued under section 354 of the Mumbai Municipal Corporation Act, 1888. They do not, therefore, categorically and conclusively establish and prove that the structure need not be brought down, but with usual maintenance and repair works, it can stand safely. To our mind, the others are not with the petitioner but have accepted the facts as set out in the notice. Equally, the society is not admitting the factual position as asserted by the petitioner. It would, therefore, be highly unsafe for us, in these circumstances, to interfere with the municipal action. If tomorrow the interim orders passed by this court in the year 2015 are allowed to continue and any mishap occurs, the court will be blamed and none else. We have found, from June, 2019, that the heavy monsoon and rains brought down many structures, which were claimed to be very sound and we have witnessed many

casualties in Mumbai. Therefore, it is high time that the court takes up all matters urgently particularly where there are interim orders of the nature noted by us. That is why we have not acceded to the request of the petitioner No.1 for adjournment and we told her in open court that each and every page of the paper book, including the reply affidavit as also the rejoinder of the petitioners have been carefully perused by us. Equally, unmindful, as the petitioners are, of the limits of our writ jurisdiction, we have very patiently and carefully heard petitioner no.1 and took up her cause.

13. We find no merit in the writ petition. We cannot allow the petitioners to continue and occupy the premises simply because petitioner no.1 is a senior citizen. It is in her own interest that she should vacate the same. If tomorrow the building is demolished by the Municipal Corporation, neither the petitioners' right, title and interest in the property nor their right to occupy and possess the independent flat and unit, should the property be redeveloped, is affected. In the pending proceedings, this right can be pursued by them independently of the observations made in this order. All the more, when the petitioners' right in the property has never been disputed by the fourth respondent.

14. With the aforesaid observations, the writ petition is dismissed. There would be no order as to costs.

15. In the light of the dismissal of the writ petition, the notice of motion does not survive and stands disposed of as such.

16. After the judgment was dictated and pronounced in open court, the petitioner seeks a stay for four weeks. We cannot understand the reason for this request. We have in fact given the petitioner every protection. We have noted Mr. Patil's statement, as also the settled law, that her rights in regard to her flat in the building are undisputed, and, further, that reconstruction does not obliterate or take away any of the petitioner's rights. That takes care of her apprehension that she will be without shelter or deprived of her home. We have also carefully separated the issue of structural stability and of the building being ruinous from her dispute about her flat and her rights. We have made it clear that the two are unconnected. Just because there is or was a dispute about a particular flat does not mean the building itself cannot be categorised as ruinous, dilapidated or dangerous. We have found no merit in her case that the building is not ruinous. Now that her rights in regard to her flat in the building are sufficiently and fully protected, by permitting reconstruction we are in fact further ensuring that the petitioner has a decent, safe and stable structure

in which she will undoubtedly be entitled to a flat on such reconstruction being completed. Of course this will need the usual bipartite or tripartite agreements as are common in such reconstruction projects and we have no reason to believe that such an agreement with the petitioner will not be forthcoming on terms as decided by the society of which the petitioner is admittedly a member. The petitioner cannot get special rights different from those of her fellow members, but she is certainly entitled to the same rights. We need not say anything further on this aspect of the matter. It is enough to note that there is nothing in the present order that adversely affects any rights of the petitioner. We have also not disturbed the other litigations that are pending. For all these reasons, the application for a stay is without justifiable basis and is refused.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)