

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

NOTICE OF MOTION NO.296 OF 2019
IN
WRIT PETITION NO.76 OF 2019

Saumik Shah ... Applicant

In the matter Between :

Chandrakant Suryavanshi and Ors. ... Petitioners

Versus

The Municipal Corporation of Greater
Mumbai and Ors. ... Respondents

WITH
WRIT PETITION NO.76 OF 2019

Chandrakant Suryavanshi and Ors. ... Petitioners

Versus

The Municipal Corporation of Greater
Mumbai and Ors. ... Respondents

Mr.Pramod Bhosle i/b Sharad K. Bhosle
for the applicant/petitioners.

Ms.Rupali Adhate for MCGM.

Mr.Sharad P. Chavan, Assistant Engineer
(B & F), 'N' Ward present.

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

DATE :- JULY 26, 2019

P.C. :-

1. This petition was dismissed in default.

2. On the subsequent occasion, when a Notice of Motion for restoration was moved, we informed the learned advocate for the petitioners that if he remains present on the date and time on which this Notice of Motion is listed, we will recall our order dismissing the writ petition in default, restore it and hear it for admission, forthwith.

3. Based on this agreement, we recall our earlier order dated 23rd July, 2019.

4. We have heard Mr.Bhosle appearing on behalf of the petitioners.

5. It is clear from the report that was placed before the Municipal Commissioner, copy of which is at page 230 of the paper-book, that the contention is that the building in question is repairable and no notice under Section 354 of the Mumbai Municipal Corporation Act, 1888 was called for. The argument is that the building is categorised as "C2-B". When such is the categorisation, the structure is not required to be demolished. In the circumstances, the notice is bad in law.

6. The another argument is that the notice is bad in law because, after this Court's orders, the Municipal Corporation has framed a policy. Our attention has been invited to the policy

dated 25th May, 2018, which mandates that when there are two conflicting reports, it is necessary to refer the case for opinion of the Technical Advisory Committee. In these circumstances, it is urged that the impugned notice should be quashed and set aside.

7. On this writ petition, this Court passed an order on 10th July, 2018. That order reads as under :-

“Not on board. Taken up on board.

2. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the first to third respondents. *Prima facie*, it appears from the email issued by the first respondent-Municipal Corporation on 21st June 2018 that a meeting of the Technical Advisory Committee (TAC) was to be held on 22nd June 2018. After receipt of the impugned notice dated 14th February 2018, the petitioners submitted a report of the Structural Consultant which records that the building is repairable.

3. If the matter is referred to TAC, the question is whether before TAC submits its report notice dated 14th February 2018 can be implemented. Issue notice through Court to the fourth respondent, returnable on 16th August 2018. To be listed under the caption of fresh admission.

4. By way of ad-interim relief, we restrain first and second respondents from taking any action on the basis of the impugned notice dated 14th February 2018 subject to condition of the petitioners filing undertakings in this Court stating therein that they will continue to occupy their respective premises at their own risk and that in the event the said building or any part thereof collapses, they will be solely responsible for any loss or damages caused to the third parties. If such undertakings are not filed within a period of two weeks from today, the ad-interim relief shall stand vacated without further reference to the Court.”

8. A perusal of this order indicates that reliance is placed upon an email issued by the Municipal Corporation on 21st June, 2018 that a meeting of the Technical Advisory Committee was to be held on 22nd June, 2018. Though the impugned notice is dated 14th February, 2018, a report of the Structural Consultant was submitted by the petitioners, which shows that the building is repairable. This Court was of the view that if the matter is referred to the Technical Advisory Committee, but the question is, before the Technical Advisory Committee submits its report, can the notice be implemented and enforced and that is why the interim protection.

9. A careful perusal of the writ petition would denote that the petitioners are residing in a building known as Building No.97/2930, the Pant Nagar Prabhat Kiran C.H.S. Ltd., Pant Nagar, Ghatkopar (E), Mumbai - 400 075. Pertinently, the Co-operative Housing Society is before this Court as respondent No.4. It has not challenged the notice. The petitioners are the members of respondent No.4-society. It is respondent No.4, who is the owner of the building and also has a right in the land beneath it. It has entered into an agreement dated 26th August, 2010 with M/s. Shikara Constructions Pvt. Ltd. for the purpose of redevelopment of the society's property. However, that entity has not taken any

steps to redevelop the property. The complaint is that the members are kept in dark with regard to the minutes of the Managing Committee, all General Body meetings and all other documents of the society. There is a dispute and, therefore, the petitioners approached the Deputy Registrar in or around 2017. They were provided with the Development Agreement and minutes of the meeting of the society. It is stated that there was a Special General Body meeting on 3rd December, 2017, wherein, majority of members expressed their 'no confidence' in the Managing Committee and desired that it should be dissolved forthwith. The resolution to that effect was also passed. It is then stated that office bearers of respondent No.4-society, in order to further their *mala fide* intent, approached M/s Dimension Consultants for structural audit of the building and that structural audit report revealed that the building is of "C-1" category. That report is of January, 2018 and it says that the building has deteriorated and dilapidated to such an extent that would likely to fall.

10. Thereafter allegations are made in para 4(e) against the Secretary of the respondent No.4-society. That is also repeated in para 4(f) and 4 (g). It is then stated in para 4(h) that because of the repeated letters and the alleged structural audit report, the

Mumbai Municipal Corporation issued a notice dated 14th February, 2018 informing that this building is in a ruinous condition and likely to fall. It is dangerous to any person occupying, resorting to or passing by. The society was called upon to pull down the building.

11. The arguments of Mr.Bhosle overlook an important, but fundamental position in law. The petitioners, who are members of the Co-operative Housing Society, have no independent existence in law from that of the Co-operative Housing Society. It is a Co-operative Housing Society which is legally recognised entity. It has a power to sue and it can be sued as well. None is required to sue members individually when there is a Co-operative Housing Society registered under the Maharashtra Co-operative Societies Act, 1960 in place. We do not see how such a petition can be entertained by this Court and particularly, when the real issue and dispute is between the petitioners who are the members and the office bearers of respondent No.4. The collusion of the Managing Committee's members with the developer by itself is not enough to vitiate the action of the Mumbai Municipal Corporation. The petitioners may approach anybody to conduct the structural audit, but that structural audit report has no legal status and based on which, the Mumbai Municipal Corporation

cannot be held to be obliged to refer the matter to the Technical Advisory Committee. If one proceeds like this, then possibly in every building in Mumbai, where there are disputes between the occupants and owners, between the members of the Co-operative Housing Society and Managing Committee of the society, the Mumbai Municipal Corporation will have to necessarily wait till these disputes are resolved, but during the pendency of which, the dangerous, dilapidated, old and ruinous buildings and structures may fall or collapse. In that event, those who are the victims or get buried under it are not necessarily the occupants, but those passers-by or residing in the neighbourhood. We do not think that the Municipal Corporation is expected to entertain the disputes of these nature and try to resolve them. It has a higher obligation towards the public at large. It has a statutory function and duty to discharge. In the circumstances, the allegations that are made in the petition have no substance.

12. We do not think that we should entertain the writ petition when it is conceded that the building in question is more than 50 years old. That there has been no structural audit carried out after the benchmark of 30 years. Everybody who moves this Court invariably says that after the notices are issued by the Municipal Corporation, they have approached the Structural

Auditor. They forget that Section 353(b) was inserted in the statute, namely, the Mumbai Municipal Corporation Act, 1888 in the year 2009. From that time, we have seen good decade passing by, but none has bothered to get the structures audited. If the society has failed, nothing prevented the petitioners from getting their structure audited from the Structural Auditor on the panel of the Mumbai Municipal Corporation. The real issue is that the petitioners have a problem with the Managing Committee and the Developer chosen by them. But, that would not vitiate the conclusion of the Mumbai Municipal Corporation as reflected in its notice that this building cannot be allowed to stand once its condition is so bad that it is likely to fall. It has been very categorically stated in the notice itself that the building is in a ruinous condition. It is likely to fall and it is dangerous to any person occupying, resorting to or passing by the same. To our mind, the opinion in this notice cannot be questioned by the subsequent acts and attributable to the Municipal Corporation. It may have evolved a policy and it may have set up the Committee to advise it. It may further have decided that if there are conflicting reports, the matters can be referred to the Technical Advisory Committee. In the instant case, it may have done so. But, what we have noticed is that the structure belongs to the Co-operative Housing Society. The Co-operative Housing Society

itself knows that the building is so old that the whole property requires redevelopment. For that purpose, there is no opposition to bring down the building and to have the property redeveloped. The real issue is, who should develop it and on what terms.

13. We do not think that the allegations in the petition are enough to vitiate the subjective satisfaction of the Mumbai Municipal Corporation. There was absolutely no necessity for allowing the petitioners to occupy the building until some technical committee proceeds to advise the Municipal Corporation about its future course of action. On that basis alone and without anything more, particularly, in the absence of *mala fides*, we cannot interfere with the impugned notice. The writ petition has no merits and is dismissed. The ad-interim orders stand vacated forthwith.

(SANDEEP K. SHINDE, J.)

(S.C.DHARMADHIKARI, J.)