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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 402 OF 2018

Mauli Bharat Udyog Nagar Welfare Association & ...Petitioners
Ors

Versus

Municipal Corporation of Greater Mumbai & Ors ...Respondents

Mr Sanjay Jain, *with Nishan Sashidaran, & Sarika Mehra, i/b LJ*
Law, for the Petitioners.

Ms Rupali Adhate, *for the Respondents-MCGM.*

Ms Panthi Desai, *for Respondent No. 3.*

Mr Kirish Limje, *Sub-Engineer, B&F, P/S Ward, MCGM, is present.*

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

DATED: 12th July 2019

PC:-

1. By this petition under Article 226 of the Constitution of India, a notice under Section 354 of the Mumbai Municipal Corporation Act 1888 (“MMC Act”) has been challenged.

2. The contention of Mr Sanjay Jain, learned Advocate appearing for the petitioners is that not once but twice this Court intervened and directed that such notices cannot be taken to their conclusion unless there is a preceding exercise carried out by the technical experts which would certify structures such as occupied by

the petitioners as either dangerous, dilapidated or likely to fall. This certification has to be further preceded by technical experts carrying out physical inspection, applying the norms and standards prescribed by the Council of Architecture for building construction and thereafter the Corporation can issue notices to bring down or demolish the building or structure covered by the notice.

3. In the instant case this exercise was conspicuously absent and this Court directed the Committee set up by the Corporation itself to evaluate the rival versions and record its opinion.

4. The Corporation and the Technical Advisory Committee is supposed to have ignored this Court's order and directions is the complaint.

5. Now under challenge is a notice, a copy of which is at Exhibit "RR" to the petition, dated 19th September 2017.

6. That notice records that the exercise which has been directed to be carried out is indeed carried out. The Corporation stands by its notice issued earlier. The position is that the tests conducted in terms of this Court's order as well as the order of the TAC leads to only but one conclusion that the building Mauli Bharat, Dr Baba Sahib Kotkar Road, Goregaon (East), Mumbai in P/South Ward is in such dilapidated condition that it cannot be categorized but as "C-1".

7. It is common ground that such a category means that the building is not fit for repairs nor can it be allowed to stand at site. The building is in such a state that without giving any warning it may collapse endangering the life and safety of not only the persons carrying on business therefrom but those residing in the neighbourhood and passers by.

8. At the end, the argument of Mr Jain is, that this conclusion is not in tune with the language of the statute but he would submit that the exercise expected to be carried out, namely, technical inspection, is not carried out.

9. Upon perusal of the relevant documents, we are unable to agree with him.

10. Our reasons are that this building has been constructed for more than four to five decades ago. Our conclusions are also supported by referring to a notice issued invoking Section 354 of the MMC Act 1888 dated 11th October 2013. Our conclusions are that this notice could not be taken to its logical conclusion simply because of the hurdles placed by the occupants themselves. The occupants may have an on-going issue or dispute with the owner and that is essentially projected in the arguments of Mr Jain. Concededly, no repairs were carried out to this building and we are not impressed by Mr Jain's argument that an attempt was made to carry out repairs but the occupants could not obtain any permission in that behalf from the Municipal Corporation.

11. The request is that if the building is not habitable and is unfit for human habitation because it is dilapidated, old and dangerous, then, the occupants-petitioners before us be allowed to bring it down and reconstruct it. A further request is that we must direct the Corporation to grant a Development Permission so that the petitioners can construct the building after the old structure is pull down.

12. This argument is premised on the alleged discriminatory conduct of the owner, the 3rd respondent to this petition. The elaboration is in the form of the complaint of Mr Jain that this gentleman/entity is constructing an eight-floor building (high rise construction) which is adjacent to the structure covered by the impugned notice but he does not pull down the old dilapidated structure and provide the occupants like petitioners their permanent alternate accommodation.

13. The argument of Mr Jain makes reference to Section 499 of the MMC Act 1888. He would submit that this provision as amended permits the petitioners to carry out such reconstruction.

14. With Mr Jain's assistance, we have perused Section 499 of the MMC Act 1888. It says that in default of owner, the occupier of any premises may execute required work and recover expenses from the owner. There are amendments made to this section by introduction of sub-sections and sub-sections 3, 4, 5 and 6 read thus:

“(3) If the owner fails to commence the reconstruction of the building which is pulled down in pursuance of section

489 read with section 354, within the period of one year from the date of demolition, the tenants shall be entitled to form an association or society and take appropriate steps for reconstruction of the building.

(4) The owner of the building, which is pulled down in pursuance of section 489 read with section 354, shall complete the reconstruction or redevelopment within a period of three years from the date of demolition of such building or such extended period as may be granted by the authority specified by the Government, by notification in the *Official Gazette*. If the owner fails to complete the reconstruction or redevelopment within the said period, then the tenants shall be entitled to form an association or society and take appropriate steps for reconstruction of such building.

(5) After reconstruction or redevelopment of such building as per sub-section (3) or (4), as the case may be, the area equivalent to the area occupied by the tenant shall be handed over to him by the owner, association or, the society, as the case may be, without any further delay and within one month from the date of completion of reconstruction or redevelopment, as the case may be, of such building.

(6) The right of reconstruction to the tenants under sub-section (3) or (4) shall only be for reconstruction to the extent of the area of demolished building. The ownership rights and title to the land including reconstructed or redeveloped building shall continue to remain with the owner and the status of the tenants shall remain as tenants only.”

15. A perusal of the same would indicate that if the owner fails to commence the reconstruction of the building which is pulled down

in pursuance of Section 484 read with Section 354 within a period of one year from the date of demolition, the tenants shall be entitled to form an association or a society and take appropriate steps for reconstruction of the building. Today the position is that the building stands and it is not pulled down.

16. Sub-section (4) preserves in the owner the right to reconstruct or redevelop but he shall do so within three years of the demolition or such extended period as may be granted by the authorities specified by the Government. If he fails to do so, then the tenants shall be entitled to form an association or society and take appropriate steps for the reconstruction of such building. After reconstruction or redevelopment of such building, as per sub-sections (3) or (4), as the case may be, an equivalent area can be occupied by the tenant have to be handed over to the tenant by the owner, association or the society.

17. This Section with its sub-sections confers rights but these are coupled with duties. No right of the nature claimed by these sub-sections can be exercised without the corresponding obligation being fulfilled. It is in the event the construction is pulled down that all the rights could be claimed by the tenants.

18. By raising challenge to the notice itself and prolonging the agony of the occupants and causing prejudice to the larger public interest, the present petitioners can hardly be heard to say that their rights under these provisions may be jeopardised in the event the Corporation brings down the building.

19. We do not think that the tenants' rights flow only from these provisions. There are general law provisions taking care of such rights and equally protecting them. It would be highly unsafe for us to express any opinion for today we do not have a complete picture. We also do not have the facts in their totality. We have only rival versions. The version of the owner may be very damaging for the petitioners/occupants for he does not recognize all of them as tenants, but the explanation to the sub-sections of Section 499 of the MMC Act read together with the substantive provisions preserve in the petitioners not only the claim of tenancy but their status as such. That those in occupation would have to get established themselves as tenants somewhere else or that presently this litigation has neither resulted in any benefit accruing to the petitioners, by itself and without anything more will not entitle us to interfere and prevent the Municipal Corporation from discharging its statutory obligation to the public at large.

20. The attempt is to prevent the Municipal Corporation from doing this and that is the reason why we have in the foregoing paragraphs held that the structure does not merit or deserve any protection. It is a clear conclusion by the TAC in the report and its order that this structure if allowed to stand poses enormous risk not only to the life of the occupants but to those residing in the neighbourhood and passing by. The TAC conclusion at pages 381-382 of the paper-book reads as under:

“TAC Conclusion:-

The site has been inspected on 27.02.2017 by Post Graduate staff appointed by M.C.G.M. along with the ward staff on

behalf of TAC. TAC meeting was held on 13.7.2017 in the chamber of Director (ES&P), when the representatives of VJTI, M/s. B.J. Mehta Architectural & Structural Consultants Pvt Ltd and M/s. Spectral Consultants were present in the meeting the structural audit reports of VJTI and M/s. B.J. Mehta Architectural & Structural Consultants Pvt. Ltd. Were taken into consideration.

During the TAC meeting, TAC members noticed that the structural audit reports of M/s. Neo Tech Consultants was not attached to the file. Moreover, no one appeared on behalf of M/s. Neo Tech Consultants in the TAC meeting. Hence, structural audit reports of M/s. Neo Tech Consultants is not taken on record.

Post Graduate Engineers appointed by M.C.G.M. and P/South Ward staff apprised to all TAC members that the building is G+1 RCC Industrial structure. The building is not maintained and the structural members like columns, beam and slab are in highly distressed condition. Major cracks are seen in structural members, such as beams, columns, slab and are beyond repair. Reinforcement of columns, beams, slab are exposed at many places and are in highly corroded condition. Propping is done in the passage. Even if repairs are carried out, it would not serve any purpose as the structure has lived its useful life. Hence, Post Graduate Engineers appointed by M.C.G.M. and P/South Ward staff are of the opinion that the structure needs to be pulled down.

A.L.O. apprised all the orders of Hon.High Court to the TAC members. Further, A.L.O. also apprised that Hon. High Court has already disposed off the matter by their order in W.P. No. 2965 of 2014 dtd. 28.06.2016. Hon. High Court had set aside the order passed by D.M.C. (Z-IV) DATED 27/08/2014 & remit the matter back to the T.A.C.

For taking a fresh decision keeping in view the directions contained in the order dated 18/07/2014 in W.P. (L) No. 1806/2014.

Shri Sameer Sawant, representative of VJTI apprised that the report submitted by them was in the year 2014 and on the basis of the same they have submitted proforma 'B' in the year 2016. Shri Sameer Sawant, apprised that only 20% of the structural members are highly dilapidated and require major and urgent repairs. He further added that few of the columns are highly dilapidated and rest are in good condition. Shri Sameer Sawant was of the opinion that the building is repairable provided major structural repairs like jacketing, placing of additional reinforcement, polymer modified mortar (PMM), Micro concreting technique and re-plastering work externally and internally wherever required are carried out.

Shri Nihar Mody, representative of M/s BJ Mehta Architectural & Structural Consultants Pvt. Ltd. Apprised to all TAC members that the building is in very poor condition due to lack of proper maintenance. Propping is done in the passage. The building is an industrial structure. The structural members like columns, beam and slab are in highly distressed condition. Major cracks are seen in structural members, such as beams, columns, slab and are beyond repair. Reinforcement of columns, beams, slab are exposed at many places and are in highly corroded condition. He also produced photographs showing deteriorated condition of the structural members. All the test results are very poor. He further added that the structure is beyond repair and even if repairs are carried out it would not serve any purpose, as the life of the building will not ___ by much. Hence Shri Nihar Mody was of the opinion that the building needs to be evacuated and demolished immediately.

The structural audit report, proforma 'B' and facts put up by all the structural consultants, opinions/reports of ward staff and Post Graduate Engineers appointed by MCGM were discussed in details during meeting. TAC opined that, the results of N.D. Tests taken by VJTI in 2014 and M/s. B.J. Mehta Architectural & Structural Consultants Pvt. Ltd. In 2016 are showing progressive nature of the deterioration in all the structural members. The test results are not at all satisfactory and hence the said building known as "Mauli Bharat Udyog" is in severely dilapidated condition and may collapse without giving any warning thereby endangering the life and property of the residents and the people residing in adjoining properties and passers-by. Hence the structure under reference is not habitable and needs to be vacated and demolished immediately by following due process of law under the supervision of structural consultant.

In the meantime, P/South ward staff take necessary preventive measures, such as propping, barricading etc. and cautionary board showing that the structure is in dangerous condition" shall be provided, which will be helpful to passers-by to avoid any mishap, till evacuation and demolition.

21. We have on record an affidavit of the 3rd respondent. The contents of the same speak for themselves. The disputes which are projected there by highlighting the conduct of the petitioners are enough for us not to express any opinion either way, for in this affidavit, the 3rd Respondent does not accept that the petitioners are indeed its tenants; alleges unauthorised alterations and additions causing damage to the structure; and alleges that most of the petitioners have quit the premises and gone elsewhere. All that we

do is to conclude that the notice under challenge, so also the orders of the TAC and that of the Deputy Municipal Commissioner, annexed at Exhibits “BB” and “RR” to the petition, do not suffer from any serious legal infirmity much less perversity or unreasonableness and mala fides warranting our interference under Article 226 of the Constitution of India. That jurisdiction is extremely limited and cannot be invoked to protect the rights in the property which are otherwise protected by the statutory scheme, all the more enables us to dismiss this writ petition.

22. By clarifying that our order would not prejudice the rights of the petitioners including invoking the sub-sections of Section 499 and sub-section 5 of Section 354 of the MMC Act 1888, we dismiss this writ petition. Equally we do not say that our order prejudices the 3rd respondent and its rights and contentions in any manner.

23. The writ petition is dismissed. There will be no order as to costs.

(S.C. DHARMADHIKARI, J)

(G. S. PATEL, J)