

Suresh

REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1500 OF 2016

WITH

NOTICE OF MOTION NO. 521 OF 2017

- 1. Ramesh S/o Nathubhai Patel,**
Aged about 75 years, of
Mumbai, adult, Indian Inhabitant,
residing at Smit-Deep, 59 Nutan
Laxmi Society, N.S. Road No.9,
JVPD Scheme, Juhu, Vile Parle
(W),
Mumbai – 400 049.
- 2. Vijay S/o Chamanlal Chopra,**
Aged about 65 years of
Mumbai, adult, Indian inhabitant,
residing at Smit-Deep, 59 Nutan
Laxmi Society, N.S. Road No.9,
JVPD Scheme, Juhu, Vile Parle
(W), Mumbai – 400 049.
- 3. Nandlal S/o Dayaldas Talreja,**
Aged about 65 years of Mumbai,
adult, Indian Inhabitant, residing
at Smit-Deep, 59 Nutan Laxmi
Society, N.S. Road No.9, JVPD
Scheme, Juhu, Vile Parle (W),
Mumbai – 400 049.

... **PETITIONERS**

~ versus ~

1. **State of Maharashtra**
 2. **Municipal Corporation of Greater Mumbai**, a Body incorporated under provisions of M.M.C. Act having its office at Mahapalika Bhavan, Mahapalika Marg, Mumbai – 400 001.
 3. **Mrs. Smita Kapadia**
Adult, Indian Inhabitant, residing at Laxmi Sadan, 12 Nutan Laxmi Society, N.S. Road 10, JVPD Scheme, Juhu, Vile Parle (W), Mumbai – 400 049.
- ... Respondents

APPEARANCES

FOR THE PETITIONER	Mr. Ashok M. Saraogi
FOR THE RESPONDENT NO.1	Mr. Amit Shastri, AGP.
FOR THE RESPONDENT NO. 2	Ms Vandana Mahadik.

**CORAM : S.C. Dharmadhikari &
G.S.Patel, JJ.**

DATED : 9th July 2019

ORAL JUDGMENT (Per SC Dharmadhikari J):-

1. Rule. Respondent Nos.1 & 2 waive service. By consent, rule is made returnable forthwith and the petition is taken up for final disposal. Heard.

2. By this writ petition under Article 226 of the Constitution of India, the petitioners have challenged a notice under Section 354 of the Mumbai Municipal Corporation Act, 1888 (“**the MMC Act**”), a copy of which is at Exhibit B to the petition. That notice reads as under:

“MUNICIPAL CORPORATION OF GREATER MUMBAI

Office of the Asstt. Commissioner, K/West 2nd floor,
Paliram Path, Off. BEST Bus Depot, Andheri (West),
Mumbai 400 058.

Notice under Section 354 of the Mumbai Municipal
Corporation Act

Notice No.KW/354/107/BF/AEB-04 of 2015 dt.
28/9/2015

To,
Owner/Occupier,
1) to 6)....

WHEREAS it appears to me that certain structure to which a portion of the building on premises known as Smit-Deep Apt, N.S. Road No.9, JVPD, Juhu, Mumbai-49 of which you are the Landlord/tenant/occupant of the building, which is in ruinous condition likely to fall and dangerous to any person occupying restoring to, or passing by such structure. We hereby require you, under section 354 of Mumbai Municipal Corporation

Act to avoid any mishap to vacate the premises and shift your habitation to safe alternative location to facilitate pulls down of the building to prevent all cause of danger there from. We further hereby require you, under the aforesaid section of the Mumbai Corporation Act, forthwith before proceeding to pull down the said structure to set up a proper and sufficient board or fence for the protection of passers by and other persons. We give you notice, that within 30 days from the service or receipt hereof this requisition be complied. We 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 requirements to be done as mentioned in the notice under section 354 of M.M.C. Act as shall in my opinion be necessary for giving effect to this requisition and you will be liable for the expenses thereof which will be recovered from you in the manner provided under section 491 of the said Act before the appropriate forum/court of law. No portion of the structure within the regular line of street may be reconstructed no anything within the scope of section 342 of the said Municipal Corporation Act, other than the work which you are expressly required by this notice to do be made or done without previously giving notice thereof as required under section 342 aforesaid. Kindly also note over leaf conditions of the notice.

Sd/-

Designated Officer-04
Asstt. Engineer(B&F) K/West

Note:-

(1) to (6).....”

3. Mr. Saraogi, appearing on behalf of the petitioners, would submit that the petitioners are occupants of this building which has been identified as dangerous or ruinous and likely to fall. It is a building of a ground plus two upper floors. A part of the premises are occupied by the 3rd respondent, who is the owner.

4. Apart from her, there are five other occupants. The owner/landlady has been trying to redevelop the property by bringing down the building. On account of non-cooperation of the tenants/occupants despite her proposal in writing of 5th May 2004, she approached the Court of Small Causes seeking their eviction. She lost the litigation there and now she has preferred an appeal before the Appellate Bench of Court of Small Causes, which is pending.

5. Mr. Saraogi invites our attention to paragraphs 2 to 8 of this petition to submit that there is a trend emerging from the notices issued by the Mumbai Municipal Corporation, invoking Section 354 of the MMC Act. The trend is, such unsuccessful landlords/owners manage the municipal machinery and get such notices issued. The notices are issued in the garb of securing an order in an indirect manner for the Municipal Corporation can then be asked to justify its action in independent proceedings by the occupants. If the occupants fail, the landlords achieve their purpose through this mechanism. This is routinely adopted and charted course,

according to Mr. Saraogi. That is evident, according to him, from paragraphs 2 to 8 of this petition.

6. Pertinently, in these paragraphs, there is no reference to the time, date and year in which the suit was laid in the Court of Small Causes by the landlady and post the offer of 5th May 2004. There is no reference to the date on which that Suit came to be disposed of or dismissed. There is no reference to the details of the appeal which is stated to be pending. For all we know there is a single appeal challenging a decree of dismissal of a single suit or there may be multiple suits and multiple appeals.

7. Be that as it may, the so-called trend that is alleged to be emerging from a barrage of such notices issued to several occupants of buildings across Mumbai is noticed only when the draftsman sit down to draft a petition for such occupants. In this case, the alleged 'trend' went unnoticed until 12th October 2015.

8. We have also not been shown that from 5th May 2004, when the offer was allegedly made, and after the alleged dismissal of the Suit and pendency of the appeal, the occupants have done anything to maintain or repair the old structure. We have not been shown any record of the tenants seeking the assistance of a competent court to carry out tenantable repairs at their own cost and expenses, or that they called on landlady to do so. It is very easy to say that

municipal officials can be ‘managed’ by landlords and owners through influential and powerful persons and that, at their behest, such notices are issued. If we were to accept such allegations in every petition that is brought before us, possibly every such notice would have to be struck down. Far from it, when we are questioning and demanding accountability from the occupants/tenants as well, reminding them of their statutory rights and equally duties, the only defence is that the occupants cannot repair somebody else’s structure to such an extent that it will undergo a complete change. We have never suggested extensive structural repairs to be carried out; we are aware of the position in law. When we remind the tenants and occupants of their obligation, we are only referring to *tenantable* repairs to a structure or building to keep it habitable and fit for occupation. In paragraphs 2 to 8, we have not been shown any such material. We will return to the precise legal position in this regard a little later in this judgment.

9. It is in the above circumstances that we must consider the arguments of Mr. Saraogi that the notice in question has been issued at the instance of the landlady and only to enable her to secure eviction of the occupants from the building.

10. The notice challenged in this petition is dated 28th September 2015.

11. The petitioners rely upon a report of a Structural Engineer/Auditor styling himself as an 'Architect – Engineer – R.C.C. Specialist – Government Approved Valuer'. His report is dated 10th October 2015. In the covering letter addressed to the petitioners, this gentleman very clearly says that he strongly recommends carrying out necessary repairs to the supporting structural members consisting of RCC columns, beams and slabs of the building as a whole, for external leakage, rather than attending to problems individually. He says this on 10th October 2015, and in his report, which refers to the inspection of every single flat. He finds structural distress or defects in a few flats. He says clearly that the building is a reinforced cement concrete (RCC) framed structure and for healthy condition of its various members, namely, slabs, beams and columns, both from inside and outside, in all rooms and in service areas like staircases, passages, etc., structural repairs are a must. It is only then that structural stability will be achieved. Even then, with the above observations and opinion, in the preceding paragraphs he concludes, as under:

“8. CONCLUSION:- Over all condition of the building with respect to R.C.C. Structure will be safe, stable if repaired immediately. The structural distress is mainly due to leakages and non-maintenance. The chhajja portions, RCC ceiling RCC Beams and slabs of balconies, and few RCC Columns supporting members as described in details needs utmost attention and repairs, to protect the structure. It may become dangerous and may cause casualty of life and property

if not attended in time. Hence it is absolutely necessary to attend to leakages and repairs to structural distress simultaneously as this will avoid creating joints between old and new surfaces. All drainage pipelines need to be checked separately as due to seepage of water and atmospheric changes will lead to fresh corrossions in structural members and this process will be continued forever. If we attend only the structural distress in phase wise and not attend to leakages we can expect structural distress again.

Supervision is a very important factor in getting a satisfactory repair job. The tenants should appoint an experienced person as clerk of works/Site Engineer to monitor the work of repairs with less inconvenience apart from appointing consulting Engineer.

IN OUR OPINION AS ON TODAY THE BUILDING APPEARS TO BE STRUCTURALLY SAFE EXCEPT BALCONIES AND CHHAJJA PORTIONS. THESE REQUIRE IMMEDIATE ATTENTION. IT IS NOT NECESSARY TO VACATE THE BUILDING AT THIS STAGE. HOWEVER IT REQUIRES IMMEDIATE REPAIRS AS STATED HEREIN ABOVE.”

12. We are in the year 2019. This petition was moved on 28th October 2015 before a Division Bench of this Court. This Court was persuaded to pass the following order on that day:

“1. Not on board. Taken on board.

2. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the second respondent. The learned counsel for the second respondent seeks time.

3. The petitioners are relying upon the report of Shri M.V. Gandhi, Architect and Structural Consultant. He has opined that the building can be repaired.

4. Place the petition on 26th November, 2015 which is the scheduled date. Issue notice to the respondent No.3, returnable on the same date. We direct the second respondent to file a reply before the returnable date and place on record the inspection report and the documents, if any, on the basis of which the impugned notice under section 354 of the Mumbai Municipal Corporation Act, 1888 has been issued.

5. By way of ad-interim relief, we direct that the impugned notice shall not be enforced or implemented subject to the condition that the petitioners shall file undertakings in this Court that they will continue to occupy their respective premises at their own risk. The undertakings to further state that in the event there is a collapse of the building or any part thereof and any loss is caused to any third party, only the petitioners will be responsible for the same. If such undertakings are not filed within a period of one week from today, the ad-interim relief shall stand vacated without further reference to the Court.”

13. Mr. Saraogi may say that there is no response from the Municipal Corporation after that date, but we find that there is indeed one.

14. One Akthar Husain Abdul Rashid Shaikh, working as Assistant Engineer, Building & Factory, K/W-West Ward, in

the employment of the Municipal Corporation, has filed an affidavit. That takes care of the criticism of Mr. Saraogi that the Municipal Corporation proceeded to issue the subject notice without any inspection and without any material in its possession to record an opinion that the building is in a dangerous condition; and Mr. Saraogi's further criticism that although the building is very old, it may not be necessarily dangerous for occupation or for the safety of those residing in the neighbourhood or passing by and therefore cannot be said to be in a ruinous state at all.

15. Moreover, this affidavit of the Municipal Corporation says that routine inspection revealed that this building was dilapidated and in a ruinous condition. There was a notice issued under the same provision on 7th July 2014, to which Mr. Saraogi may not refer in its entirety, but that indeed calls upon the occupants and the landlady to repair the building. Once the time to carry out the repairs as mentioned in the Notice was allowed to expire and no repairs were carried out, the Junior Engineer put up a report and which was in turn placed before the Executive Engineer, K/W Ward. The site was inspected by this Executive Engineer on 17th June 2015. After inspecting the site, the Executive Engineer put up a report to the Deputy Chief Engineer (Building Proposal), Western Side, stating that the building is in a ruinous condition. The Deputy Chief Engineer (Building Proposal), Western Side himself visited this building on 3rd September 2015 and he observed that the internal and external plaster

was found peeled off with several cracks observed in the structural members viz., columns and beams, at multiple locations. The reinforcement of the structural members was found exposed and corroded. Leakages and seepages were also observed. The columns were also seen to have buckled at two locations. Rank vegetation was also observed at several locations. The structure was showing sign of severe deterioration and due to such distress the load carrying capacity of the structural members had been reduced. So the Ward Executive was directed to get the building vacated without further delay.

16. We have carefully perused the copies of these documents which are annexed as Exhibit-I and II to this affidavit and we find that the contents of the previous notice dated 7th July 2014 are in total sync with the conclusion of Mr. M.V. Gandhi, the Structural Engineer engaged by the petitioners/occupants. His services were commissioned by these occupants to opine whether the building can be repaired. As has been the stand of the Municipal Corporation, from 2014, that the repairs were so urgent and immediate that if not carried out the structure was likely to fall.

17. It is in these circumstances that the affidavit proceeds to say that the notice dated 28th September 2015 is challenged in this Petition. Pertinently, in this affidavit there is an assertion of the Municipal Corporation that the petitioners refer to an independent report from a Structural Engineer

dated 10th September 2015, a copy of which is at Exhibit C to the petition, but that has never been submitted to the office of the Municipal Corporation. Thus the justification by the Corporation for issuance of the notice is based on its independent assessment and inspection. The Municipal Corporation has categorically said that in the event the building collapses and if any loss or damage is caused either to the occupants or passers-by or the neighbouring structures, the Municipal Corporation shall not be responsible for the same.

18. Mr. Saraogi would submit that our Judgment and Order dated 24th June 2019, passed in the case of *Mahendra Bhalchandra Shah & Others v Municipal Corporation of Greater Bombay & Others*¹ is not at all applicable to the facts and circumstances of this case. Mr. Saraogi would submit that this is a case where the landlord is securing a decree of eviction through the means of the notice under challenge. Mr. Saraogi would submit that this Court should not only go by the language of Section 354 of the MMC Act but must see the preceding and the following sections.

19. With the assistance of Mr. Saraogi we have perused Sections 353, 353A and 353B. Since heavy reliance has been placed on Section 353B, we reproduce it below:

“353B. Structural Stability Certificate.

1 Writ Petition (L) No.1755 of 2019.

(1) Every owner or occupier of a building in respect of which a period of thirty years, from the date of,—

(i) issue of its completion certificate by the Corporation; or

(ii) issue of permission to occupy a building under section 353A ; or

(iii) its physical occupation of at least 50 per cent., of its built-up area, whichever is earlier, has expired,

shall cause such building to be examined by a Structural Engineer registered with the Corporation for the purposes of certifying that the building is fit for human habitation (such certificate hereinafter referred to as “the Structural Stability Certificate”). The Structural Stability Certificate issued by such Structural Engineer shall be submitted to the Commissioner.

(2) The Structural Stability Certificate shall be submitted within one year from the expiry of a period of thirty years referred to in sub-section (1), and every ten years thereafter or such earlier period as the Commissioner may determine having regard to the condition of the building and the corrective repairs carried out by the owner or occupier.

(3) Notwithstanding anything contained in sub-section (1), the Commissioner may, at any time, after having recorded the reasons, in writing, direct the owner or occupier of a building, to cause such building to be examined by such Structural Engineer and to submit to the Commissioner, the Structural Stability Certificate, as required under sub-section (1),

within the period not exceeding thirty days as specified by the Commissioner, in such direction.

(4) If the Structural Engineer recommends any corrective repairs for securing the structural stability of the building, such corrective repairs shall be carried out by the owner or occupier of a building to the satisfaction of the Commissioner.

(5) Any owner or occupier, as the case may be, who fails to carry out corrective repairs for securing structural stability, within a period of six months from the date of report of the Structural Engineer, shall be punished with the fine as provided in section 471.

(6) Notwithstanding anything contained in sub-section (5), the Commissioner may, after giving the owner or occupier, a notice in writing, require him to carry out, within the period specified in the notice, corrective repairs for securing structural stability of a building. If the owner or occupier fails to carry out such corrective repairs within the period specified in the notice, the Commissioner may carry out the same and the expenses incurred by the Commissioner on such repairs shall, on demand if not paid within thirty days, be recovered from the owner or occupier as arrears of property tax.

(7) If there is any dispute about the amount of expenses for which demand is made under sub-section (6), an appeal may be preferred to the Chief Judge of the Small Causes Court, but no such appeal shall be entertained by the said Chief Judge, unless—

(i) it is preferred within twenty-one days from the date of receipt of notice of such demand ;

(ii) the amount for which demand is made is deposited with the Corporation and a true copy of the receipt showing that the amount has been so deposited accompanies the appeal.

(8) In case the appeal is decided in favour of the appellant and the amount of expenses deposited with the Corporation is more than the amount payable by the appellant, the Commissioner shall adjust the excess amount with interest at 6.25 per cent, per annum from the date on which the amount is so deposited by the appellant, towards the property tax payable by the owner in respect of such building thereafter.”

20. A perusal of this section would reveal that it was inserted by Maharashtra Act No.6 of 2009 and by its language, particularly the wording of sub-section (1), it is apparent that every owner or occupier of a building in respect of which a period of 30 years has elapsed from the date of issuance of completion certificate, or issue of permission to occupy a building under Section 353A, or its physical occupation of at least 50 per cent of its built-up area, whichever is earlier, shall cause such building to be inspected by a Structural Engineer registered with the Corporation for the purposes of certifying that the building is fit for human habitation. Mr. Saraogi would thrust this obligation upon the Municipal Corporation and its engineers. Far from correct, it

is the owner or the occupier who is obliged to obtain this certificate. The structural stability certificate shall be submitted within one year from the expiry from the expiry of a period of thirty years referred to in sub-section (1), and every ten years thereafter or such earlier period as the Commissioner may determine having regard to the condition of the building and the corrective repairs carried out by the owner or occupier. Sub-section (3) opens with a non-obstante clause and the Commissioner's discretion is intact. He can, at any time after having recorded the reasons, in writing, direct the owner or occupier of a building to cause such building to be examined by such Structural Engineer and to submit to the Commissioner the structural stability certificate as required under sub-section (1) within the period not exceeding thirty days as specified by the Commissioner in such direction. Based upon the recommendation, corrective repairs need to be carried out to secure the structural stability of the building, but this has to be done by the owner or occupier of the building to the satisfaction of the Commissioner. Failing all this, there is a punishment with fine in terms of Section 471.

21. Mr. Saraogi's arguments overlook the fact that on 7th July 2014 the Municipal Corporation called upon the owner and the occupiers to carry out structural repairs and strengthening by using appropriate material to the affected part of the building with consultation of a licensed structural engineer and to carry out repairs and remedial measures and thereupon submit the certificate. We do not think that this

provision can be read as an obligation on the Corporation to necessarily carry out the structural audit and to issue a structural stability certificate. It is the obligation of the owner or the occupier, for they reside in the structure and it is for their safety and for protecting their interests that the legislature stepped in. If the owner has neglected the building and has not maintained it at all, the occupiers have this opportunity in addition to their rights to approach a Structural Engineer and to have an inspection carried out earlier and pursuant to his inspection and report, a certificate to be forwarded to the Commissioner. However, this is an added duty and obligation. The recommended repairs have to be carried out by the person seeking intervention of a Structural Engineer and it is only then the structural stability certificate will be issued by him. The obligation is to produce the structural stability certificate before the Commissioner. If that is not done, then the Commissioner can independently act and in terms of the discretionary powers conferred on him by the MMC Act.

22. We do not think that Section 354, therefore, could not have been invoked in this case, for the Commissioner was never unreasonable or unfair to the occupants. All the more when he has apprised the occupants of the risk in occupying the structure at site and which is old and dilapidated and in a ruinous condition. He informed them on 7th July 2014 but they did nothing. He waited for one-and-a-half years and thereafter he caused an inspection to be carried out and

noticed serious defects. These are also documented by him and his officers as is evident from page 499 of the paper-book.

23. There is absolutely no rejoinder affidavit on record controverting any of these statements.

24. We do not think that we should allow the ad-interim order to continue or we should allow any structural repairs to be carried out now. The time has gone to grant any such request. Surely we cannot grant this request at the behest of those who, though mindful of their statutory duty and obligation, turn around and make false and baseless allegations against the Municipal Corporation and its Engineers. It is very easy to read one sentence or a line completely out of context from a report of the structural engineer engaged by such occupants. We have read that report of Shri M.V. Gandhi in its entirety. In every single paragraph he has set out the nature of the defects and the recommended repairs. He has not certified the building as fit for human habitation. This architect and structural engineer has opined and concluded on identical lines as the Municipal Corporation.

25. In these circumstances, there is no substance in the contentions of Mr. Saraogi that this notice is nothing but an attempt of respondent No.3-landlady to secure eviction of the petitioners from their premises. Far from it, the notice challenged in this writ petition is issued to subserve the larger

public interest. It is issued in the interest of public safety. It is also issued in consonance with the aim and object of the MMC Act and the provisions conferring discretionary powers in the Commissioner and other officials. We do not think that paragraphs 2 to 8 of the petition make out a case of arbitrariness, mala fides or perversity in the impugned action. We do not think that the Commissioner has acted unreasonably, unfairly and unjustly or the satisfaction recorded by him is vitiated by non-application of mind. He has taken into consideration the relevant factors and eschewed and omitted all irrelevant matters while arriving at the opinion that the structure is in a ruinous condition and likely to fall. He was dutybound to act considering the pathetic and deteriorating condition of the subject structure.

26. As a result of the above discussion, the writ petition fails. Rule is discharged. There will be no order as to costs.

27. At this stage, Mr. Saraogi prays that the ad-interim order passed on 28th October 2015 be continued for a reasonable period to enable the petitioners to make alternate arrangement or to shift together with their articles and belongings to some other premises or to challenge this order in the higher Court. This request is opposed by the respondents.

28. After having found that the challenge to the notice is without substance and the allegations made, particularly of

mala fides, are devoid of any particulars, then, we cannot grant the request of Mr. Saraogi. We also cannot grant it because as has been held by this very Division Bench the satisfaction of the Municipal Commissioner is not vitiated simply because after issuance of the notice under Section 354 of the MMC Act the structure has not collapsed or has not come down immediately. There is no such requirement in law and we cannot read into the law something which is not there. In fact, looking at the state of the building, the petitioners must consider themselves lucky that it has not collapsed till date.

29. Further, by sub-section (5) of Section 354, all private rights of the petitioners are intact and not affected adversely by their unsuccessful challenge to the impugned notice.

30. In view of dismissal of the writ petition, Notice of Motion No. 521 of 2017 does not survive and it is accordingly stands disposed of.

PER G. S. PATEL J:-

31. I have had the benefit and privilege of studying the erudite decision of my learned brother, SC Dharmadhikari, J. I agree entirely with his view and his conclusion. However, there are a few legal or jurisprudential aspects to which I believe a reference is necessary. These lend further support to Dharmadhikari J's views and conclusions.

32. In his judgment, Dharmadhikari J has referred to our previous decision in *Mahendra Bhalchandra Shah & Others v Municipal Corporation of Greater Bombay & Ors.*² In that decision, we referred to the Supreme Court decision in *Vannattankandy Ibrayi v Kunhabdulla Hajee.*³ That judgment drew a distinction between a tenancy of built premises covered by a rent control statute and a lease of the underlying land, in the context of Section 108(B)(e) of the Transfer of Property Act, 1882. At that time, our attention was not drawn to, and we did not notice, the later decision of the Supreme Court in *Shaha Ratansi Khimji & Sons v Kumbhar Sons Hotel Pvt Ltd & Ors.*⁴ That decision in *Shaha Ratansi Khimji* was on a reference to a larger Bench of the Supreme Court in view of an apparent conflict between the decision in *V Ibrayi* and the decision of a Bench of coordinate strength in *T Lakshmiopathi v P Nithyananda Reddy.*⁵ In the three-judge bench decision in *Shaha Ratansi Khimji*, the decision in *V Ibrayi* was overruled, viz., it was held that the distinction drawn as regards tenancies of built premises covered by rent control legislation and leases of land covered by Section 108(B)(e) of the Transfer of Property Act 1882 was incorrect; and that, therefore, there was no distinction to be made between a demolition of tenanted premises and their destruction by natural calamity. In fact, the legal position declared by *Shaha Ratansi Khimji* considerably fortifies our view, and is now

2 Writ Petition (L) No.1755 of 2019.

3 (2001) 1 SCC 564 : AIR 2003 SC 4453.

4 (2014) 14 SCC 1

5 (2003) 5 SCC 150.

firmly against what Mr Saraogi is canvassing in this case. Therefore, tenancies are unaffected whether the building collapses or is brought down by manual human intervention: the tenancies continue. The suggestion, therefore, that the tenancy will be lost if the building is demolished (but will somehow be preserved if the building collapses on its own) is without any legal basis at all.

33. Consequently, it follows that the entire basis of the apprehension that the take-down notice under Section 354 of the MMC Act has been 'procured' by the 3rd Respondent landlady to 'get rid of' the petitioners who claim to be tenants is without demonstrated legal foundation.

34. The allegation of connivance between the 3rd Respondent landlady and officers of the Municipal Corporation is nothing but a very loose, generalized and non-specific allegation of mala fides. Mr. Saraogi's submission is that all these Municipal officers are hand in glove with the 3rd Respondent landlady. It is, he submit, a 'notorious fact' and is 'well known' that many, and perhaps all, Municipal officers are corrupt and lend themselves to such connivance, collusion and conspiracy with rapacious landlords. He submits we should intervene on the basis of these non-specific allegations, and it is his submission, made with great earnestness, that an allegation in such generalities is enough. It is not. This is not what the law demands. The submission is entirely without merit. It has no basis at all in fact, and it is thoroughly

misconceived in law. The law is this: that it is never sufficient merely to allege mala fides without particulars. While direct evidence may not always be available as proof of mala fides, they must nonetheless be established. In the words of the Supreme Court, allegations of mala fides are more easily made than proved, and the very seriousness of such allegations demands proof of high order of credibility.⁶ Courts will be slow to draw dubious inferences from incomplete facts, especially when the imputations are grave and are made against persons who hold an office of responsibility in administration.⁷ Mala fides are always the last refuge of a losing litigant.⁸ The law in regard to allegations of mala fides is well settled and we will draw no general conclusion.

35. Hence, whenever mala fides are alleged, we will always demand proof. Absent proof — and there is no proof at all of any of these allegations but, as Dharmadhikari J observes, quite the reverse — the submission has to be rejected.

36. The submission from Mr Saraogi in regard to an apprehension that the attempt is to rob the petitioners of their tenancy rights is in the teeth of the amended Section 354:

354. (1) If it shall at any time appear to the

⁶ *Union of India v Ashok Kumar*, (2005) 8 SCC 760; *Government of Andhra Pradesh & Ors v P Chandra Mouli & Anr*, (2009) 13 SCC 272.

⁷ *EP Royappa v State of Tamil Nadu*, (1974) 4 SCC 3; *Indian Railway Construction Co Ltd v Ajay Kumar*, (2003) 4 SCC 579.

⁸ *Gulam Mustafa v State of Maharashtra*, (1976) 1 SCC 800.

Commissioner that any structure (including under this expression any building, wall or other structure and anything affixed to or projecting from any building, wall or other structure) is in a ruinous condition, or likely to fall, or in any way dangerous to any person occupying, resorting to or passing by such structure or any other structure or place in the neighbourhood thereof, the Commissioner may, by written notice, require the owner or occupier of such structure to pull down, secure or repair such structure Subject to the provisions of section 342, of danger therefrom.

(2) The Commissioner may also if he thinks fit, require the said owner or occupier, by the said notice, either forthwith or before proceeding to pull down, secure or repair the said structure, to set up a proper and sufficient hoard or fence for the protection of passers by and other persons, with a convenient platform and hand-rail, if there be room enough for the same and the Commissioner shall think the same desirable, to serve as a footway for passengers outside of such hoard or fence.

(3) It is shall appear to the Commissioner that any building is dangerous and needs to be pulled down under sub-section (1), the Commissioner shall call upon the owner, before issuing notice thereunder, to furnish a statement in writing signed by the owner stating therein the names of the occupiers of the building known to him or from his record, the area in occupation and location of premises in occupation, possession of each of the respective occupiers or tenants, as the case may be.

(4) If he fails to furnish the statement as required by sub-section (3) within the stipulated period, then

the Commissioner shall make a list of the occupants of the said building and carpet area of the premises in their respective occupation and possession along with the details of location.

(5) The action taken under this section shall not affect the inter se rights of the owners or tenants or occupiers, including right of re-occupation in any manner.

Explanation.— For the purposes of this section, “the tenant” shall have the same meaning as assigned to it in clause (15) of section 7 of the Maharashtra Rent Control Act, 1999”.

(Emphasis added)

The law in the specific context of Section 354 of the MMC Act was firmly settled half a century ago by a Division Bench judgment of this Court in *Diwanchand Gupta v NM Shah & Ors.*⁹ We have reiterated and reaffirmed that view.

37. The submission also wholly overlooks the salient provisions in the Maharashtra Rent Control Act 1999 regarding repairs to tenanted premises, and specifically Section 14:

14. Landlords’ duty to keep premises in good repair.

(1) Notwithstanding anything contained in any law for the time being in force and in the absence of an agreement to the contrary by the tenant, every

⁹ AIR 1972 Bom 316.

landlord shall be bound to keep the premises in good and tenantable repair.

(2) If the landlord neglects to make any repairs, which he is bound to make under sub-section (1), within a reasonable time after a notice of fifteen days is served upon him by post or in any other manner by a tenant or jointly by tenants interested in such repairs, such tenant or tenants may themselves make the same and deduct the expenses of such repairs from the rent or otherwise recover them from the landlord:

Provided that, where the repairs are jointly made by the tenants the amount to be deducted or recovered with interest by each tenant shall bear the same proportion as the rent payable by him in respect of his premises bears to the total amount of the expenses incurred for such repairs together with simple interest at fifteen per cent per annum on such amount:

Provided further that, the amount so deducted or recoverable in any year shall not exceed one-fourth of the rent payable by the tenant for that year.

(3) For the purposes of calculating the expenses of the repairs made under sub-section (2), the accounts together with the vouchers maintained by the tenants shall be conclusive evidence of such expenditure and shall be binding on the landlord.

(Emphasis added)

38. Thus, Section 14(1) makes it the statutory obligation of every landlord to keep premises in good and tenantable repair. But if the landlord does not, the tenant is not without a remedy, for Section 14(2) allows the tenant to serve a notice on the landlord calling on him to carry out the necessary repairs within 15 days, and if the landlord fails to do so, the tenant may carry out such repairs and may also deduct the costs and expenses of such repairs from the rent or otherwise recover from the landlord. Mr. Saraogi's clients have never resorted to this statutory remedy available to them.

39. As we observed in *Mahendra Bhalchandra Shah*, it is never for a court in exercise of its limited jurisdiction under Article 226 of the Constitution of India to decide whether a building is truly ruinous or not. A petition of this kind seeks judicial review of an administrative action, and the parameters of such judicial review are well established. In order to succeed a Petitioner before the Court must be able to show that the impugned action suffers from Wednesbury unreasonableness,¹⁰ i.e. it is so unreasonable that no rational person could, having regard to the fact of the case, ever have reached it. There is no scope in such cases for any larger judicial review or invoking the doctrine of proportionality.¹¹

10 *Associated Provincial Picture Houses Ltd v Wednesbury Corporation*, (1948) 1 KB 223 : 1947 (2) All ER 680.

11 *State of Madhya Pradesh & Ors v Hazarilal*, (2008) 3 SCC 273; *Coimbatore District Central Cooperative Bank v Coimbatore District Cooperative Bank Employees Association & Anr*, (2007) 4 SCC 669.

40. Consequently, the three broad areas of Mr Saraogi's case — that the building is factually not ruinous and can be repaired; mala fides; and an apprehension of tenancy rights being compromised — are all without any legal basis. I would therefore agree with Dharmadhikari J's view that the petition is entirely without merit and must be dismissed.

(S.C. DHARMADHIKARI, J)

(G. S. PATEL, J)