

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

WRIT PETITION NO.1606 OF 2016

Labhshankar H. Bhatt and Ors. ... Petitioners

Vs

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

Mr.Pradeep Havnur for the Petitioners.

Ms.Rupali Adhate for MCGM.

Mr.Johnson John for Respondent No.4.

Mr.Sunil Bharambe, Assistant Engineer
(B & F), P/N Ward present.

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

DATE :- JULY 11, 2019

P.C. :-

1. By this writ petition under Article 226 of the Constitution of
India, the petitioners pray for the following reliefs :-

“(a) That this Hon’ble Court be pleased to issue appropriate Writ directing Respondent Nos.1 to 3 to place all records, correspondence, files, documents and/or any other material available with them with respect to Jamila Buildings situate on plot of land bearing CTS Nos.136 and 137, Kurar Village, Malad (East), Mumbai and upon perusing the said records, this Hon’ble Court be pleased to hold that the Respondent Nos.1’s Notice under section 354 read with section 489 of the MMC Act, 1888 bearing No. ACPN/354/BF-33/560/of 2015 dated 1.7.2015 amongst other 354 notices issued to Jamila Building is at the behest of Respondent No.4 and the same be held to be illegal, malafide, arbitrary, unlawful and parochial;

(b) That this Hon’ble Court be pleased to issue appropriate Writ directing Respondent Nos.1 to 3 to direct Respondent No.4 to firstly comply the norms laid down by arranging alternate accommodation to the Petitioners and

comply forthwith repairs of Jamila Building “A” Wing, situate on plot of land bearing CTS Nos.136 and 137, Kurar Village, Malad (East), Mumbai for which Notice under section 354 read with section 489 of the MMC Act, 1888 bearing No.ACPN/354/BF-33/560/ of 2015 dated 1.7.2015 and other similar notices issued u/s. 354 of the MMC Act which the Petitioners and others have been issued, including notices for disconnecting Petitioners water supply;

(c) That pending the hearing and final disposal of this Petition the Respondent No.1 to 3 be directed not to forcibly dispossess the Petitioners from Jamila Building “A” Wing, situate on plot of land bearing CTS Nos.136 and 137, Kurar Village, Malad (East), Mumbai and/or disconnect the water supply to Petitioners.”

2. The petitioners had approached this Court in its writ jurisdiction under Article 226 of the Constitution of India by filing Writ Petition No.1047 of 2000, pointing out that the authorities, namely, Municipal Corporation of Greater Mumbai, the Assistant Municipal Commissioner, the Assistant Engineer (Building & Factory) styled as a Designated Officer and a private party-M/s. Classic Constructions claiming to be the landlords of the building Jamila “A” wing, comprising of 20 tenements, where the petitioners are residing, out of which 5 tenements are in possession of erstwhile landlords, have colluded with each other and seeking their ouster in the garb of redeveloping the property.

3. There, the petitioners had questioned an Intimation of Disapproval (IOD) and Commencement Certificate issued by the Municipal Corporation in favour of one Mr.Masood Hayat Khan,

proprietor of M.S. Constructions who was intending to put up a high-rise building by name “Hayat Palace” on the same layout.

4. The argument is that when that construction was questioned by the petitioners and they successfully obtained a direction to said Masood Hayat Khan to repair the petitioners’ existing building, more particularly, Jamila “A”, in collusion and connivance with the Municipal Corporation, the impugned notices dated 1st July, 2015 and others have been issued. The said notices came to be issued in utter disregard to the order dated 19th May, 2000 passed in the Writ Petition No.1047 of 2000 and a further order in a Contempt Petition dated 11th October, 2000.

5. The petitioners are complaining that over a period of time, since the landlords were never interested in the maintenance of the building, it needed extensive repairs. Before pasting of the notice dated 1st July, 2015 issued under Section 354 of the Mumbai Municipal Corporation Act, 1888, the petitioners represented to the second respondent on 7th August, 2014 requesting him to provide certain details and seeking his No-objection certificate to develop the building. The petitioners pointed out as to how the owners are interested in bringing down the building and by sheer neglect on their part, it is likely to collapse.

6. When a notice dated 19th June, 2015 was issued invoking the very provision, the petitioners corresponded with the Assistant Commissioner and requested him not to issue such notices, but to allow them to develop the building. The petitioners rely upon annexures “D” to “G” to this writ petition to urge that if an opportunity was given to carry out the essential repairs to ensure survival of the building, they would have definitely done so. The complaint is that the Municipal Corporation precipitated the matter by invoking Section 489 of the Mumbai Municipal Corporation Act, 1888. The petitioners then rely upon paragraph 6 of the present petition where they have urged that they engaged the services of a structural auditor. Mr. Hiren Tanna was the structural auditor engaged by them and who, after the inspection of the building, is stated to have opined that the building can be structurally repaired and thereupon it can be said to be fit for human habitation. That is how the petitioners state that the fourth respondent also came forward and together they would have carried out the repairs. However, the first respondent issued a letter/notice threatening to disconnect the electricity and water supply to the building, to which the petitioners replied, but apprehending drastic action, this writ petition was filed. This writ petition, thus, filed on 20th October, 2015 questions the impugned notices.

7. Our attention has been invited to an order passed on 23rd October, 2015 on this petition. That order reads as under :-

“ Not on board. Taken on board.

1 Heard the learned counsel for the petitioners and the learned counsel for the respondent Nos.1 to 3. Issue notice to the respondent No.4 returnable on 20th November, 2015. We have perused the opinion of Shri Hiren M. Tanna, the RCC and Structural Design Engineer. He has opined that the demolition of the building is not required and only structural as well as tenantable repairs are required.

2 There will be ad-interim relief in terms of prayer clause (c) till the next date subject to condition of the petitioners filing an undertaking to this Court stating that they will continue to occupy their respective premises at their own risk. Undertaking to further state that in the event there is a collapse of the building or any part thereof and any third party suffers any loss, only the petitioners will be responsible for such damage. If undertaking of all the petitioners are not filed within a period of one week from today, ad-interim relief shall stand vacated without further reference to the Court.”

8. After that order, the writ petition was listed on several occasions and our attention is invited to the further order of 29th November, 2017, which reads thus :-

“By this writ petition, the petitioners have challenged the notice under section 354 of the Mumbai Municipal Corporation Act.

According to the petitioners, who are residing in the building as tenants, the building does not require demolition and the same could be repaired. It is stated that the report of the structural engineer-architect appointed by the petitioners clearly shows that the building could be repaired.

The learned counsel for the respondent No.4 states that the landlord of the building is not in a position to repair the building. It is submitted that the monthly rent

received from the petitioners is very meagre. It is stated that the rent received from the tenants is only Rs.48,660/- per year and after paying the taxes and the other expenses, the amount available with the landlord towards the rent received from the tenants is only Rs.6,369/-. It is stated that in these set of facts, the landlord cannot be expected to shell out the entire amount for repairing the building. It is stated that the landlord is however ready to bear 50% of the expenses that would be required for repairing the building and it would be necessary for the petitioners to bear the remaining half.

We find that the request made on behalf of the respondent No.4 is extremely just and reasonable. Considering the rent received by the landlord, the landlord cannot be expected to spend the entire amount required for carrying out the repairs of the building. If the petitioners are aggrieved by the notice of demolition and are of the view that the building could be repaired, they could also expend for the repairs of the building.

The learned counsel for the petitioners seeks some time to make a statement.

Hence, stand over after two weeks, by way of last chance.”

9. Mr.Pradeep Havnur, learned advocate arguing in support of this petition would submit that these orders should be read together and an opportunity be granted to both, the petitioners and respondent No.4, to carry out repairs to the building. In fact, they have arrived at a broad agreement and we should adjourn this petition so as to enable them to finalise the arrangement and carry out the repairs. In the submission of the learned counsel, this building can be repaired and after its repair, it can be rendered fit for occupation.

10. Mr. Havnur argued that there is no response by the Municipal Corporation to the petition and the allegations therein, and all the more, therefore, we should accede to his request.

11. Our attention is invited by Mr.Havnur to the affidavit filed by the partner of the fourth respondent, in which it is stated that the co-owner of the building/property, one Gajrabi Ibrahim Shaikh, though dead, her heirs have not been joined as party-respondents. Concededly, this building was constructed prior to 1962. The affidavit says that it is an admitted position that such buildings cannot be continually repaired and they have to be developed. The annual rent received from 15 tenants is Rs.48,660/- and the balance amount, after deducting expenses such as assessment tax, water charges etc., left is a paltry sum of Rs.6,369/- in the hands of the owner. The owner further says that when the gravity of the situation was brought to the notice of the petitioners and they were requested to do something urgently or vacate the premises, they did nothing and, therefore, this respondent filed an application under Section 507 of the Mumbai Municipal Corporation Act, 1888 in the Court of Small Causes before the learned Chief Judge, being Miscellaneous Application No.6 of 2015, seeking a direction to the occupiers to afford all reasonable facilities to the fourth respondent/owner to comply

with the municipal notices. It is then claimed that appropriate steps have been taken. It is stated that the petitioners do not agree, but the position is that by a Deed of Conveyance, 75% of the share of the property has been purchased by the fourth respondent. Then, there is a justification for the acts of the erstwhile owner/ developer and this fourth respondent. There is a denial of the assertions set out in the petition.

12. In the backdrop of all this, we called for the original file from the municipal officials and that is made available for our perusal. It is apparent from a reading of the annexures to this petition that the Municipal Corporation has been repeatedly inviting the attention of the petitioners/occupiers and the owner to the pathetic condition in which this structure or building is standing at the site. There may be attempts of redevelopment, but the Municipal Corporation has nothing to do with such failed attempts. It could not have afforded further indulgence as that would have proved fatal. Therefore, it decided to step in and brought to the notice of the occupants that this building is in dangerous and ruinous condition and is likely to fall. In fact, the attempt by the Municipal Corporation to proceed against this structure in exercise of its statutory powers was to the knowledge of the occupants. The Jamila Building Rahivasi Sangh, 'A' and 'B'

Wing addressed a letter on 22nd June, 2015 to the second respondent to this petition and they admit that the Municipal Corporation has identified this structure as dangerous and that the notice was issued calling upon the occupants to carry out a structural audit and they prayed that till such structural audit is carried out, they should not be evicted or dispossessed.

13. After this communication of 22nd June, 2015 and 23rd June, 2015 what emerges from the record is that the allegation of the petitioners is that the owner is deliberately neglecting this building and, therefore, they may be allowed to repair the same. Such a request was made vide Exhibit 'G' at page 47 of the petition. Thereafter and interestingly, the very same petitioners, on 1st July, 2015, addressed a communication to the municipal authorities acknowledging and admitting that the Municipal Corporation was calling upon them to do structural audit, but requesting it not to disconnect the water and electricity supply. The personal meetings with the municipal authorities are referred to in this communication. Thus, from the date the municipal officials have been pressing for structural audit and the structural repairs, what the association of the occupants of Jamila Building "A" and "B" Wing has been indulged in is some sort of dialogue with the owner/respondent No.4, legal

proceedings and alleged attempt to seek permission to repair this structure. Nobody had prevented them from repairing the structure or carrying out of a structural audit of the building, but it is only after a reminder from the Municipal Corporation that if that is not carried out, the Corporation will proceed to perform its statutory duty and obligation to the general public. That is how on 1st July, 2015, the impugned notice has been addressed calling upon the petitioners and the owner to vacate and pull down this structure.

14. To this notice are annexed the photographs of the dilapidated Jamila Building, Wing A. There are specific defects noted and there is location footage which shows that there are roads adjacent or abutting this building and this building, if allowed to stand in the condition in which it is, it may collapse endangering the life of those residing in its neighbourhood and passers-by.

15. The co-owner (respondent No.4) addressed a communication dated 2nd July, 2015 to one of the occupants and invited his attention to the notice dated 24th June, 2015 and the preceding notices from the Municipal Corporation, copies of which were pasted on the premises. The conclusion is that the building is in dilapidated condition, likely to collapse, there is a

danger to the passers-by and the public residing in its neighbourhood. In the monsoon and rainy season, we have been noticing these state of affairs. What Mr. Hiren M. Tanna opined in his report (he may now have informed the Municipal Corporation, the petitioners and the owner that he has withdrawn himself from the assignment and does not stand by his report) is that this is a building of ground plus two upper floors. The building is about 51 years old. It has all residential flats. It has R.C.C. foundation and R.C.C. slabs. It has brick masonry walls. There are R.C.C. Beams and R.C.C. Columns. No repairs have been carried out, in the sense, neither the slab is recasted nor the column jacketing is done and in Jamila "A" building, pillars were added to provide additional support to cantilever common passage in about 1999-2000. No major structural repair works have been carried out after original construction except some minor patch works. No tenantable repairs of major nature were carried out. The terrace waterproofing work in part area of Jamila "A" was done about 20 years back and terrace waterproofing of Jamila "B" was done about 15 years' back. Plumbing may have been repaired and replacement of some damaged plumbing lines has been carried out as and when required. Unfortunately, there have been additions made in the ground floor flats. This is what, Mr.Tanna inspecting the building on 30th June, 2015 opines, and he also has

a lot to say about the condition of the internal plaster, external plaster, plumbing, drain lines and chambers. His observations are that the columns and ceilings are badly exposed. Cover concrete has fallen at few locations. At few locations, cracks have been observed on R.C.C. columns. Beams and steel have been exposed and at few locations, cover concrete of lintel beams along with chajjas have fallen off. Cover concrete of beams of bath/W.C. has also fallen mainly exposing reinforcement bars and cover concrete of slab has also fallen off at few locations, thereby exposing corroded reinforcement bars.

16. We have referred to this report dated 6th July, 2015 in great details simply because after this inspection was carried out, it appears that the occupants of this building have addressed a letter on 9th July, 2015 to the Assistant Engineer of P/North Ward stating that after the structural audit report, the opinion is that the building can be repaired. Therefore, six months' time be granted to carry out repairs. This correspondence has continued, but pertinently at Exhibit 'N' at page 81, the co-owner says that they are very keen that no untoward incident takes place. There were several meetings held, but there is no consensus about vacating the premises in order to enable them to carry out repairs. According to respondent No.4, even if the building is

repairable, but the repairs will require full cooperation from the occupants. They may have to vacate the flats in their possession so as to carry out these repairs.

17. We, cannot, in these circumstances fault the Municipal Corporation for it waited till 21st September, 2015 to issue the notice threatening to disconnect the power and electricity supply.

18. From the orders passed by this Court and reproduced above, it is apparent that on 23rd October, 2015, the parties relied upon the report of Mr.Hiren M. Tanna. Mr.Hiren M. Tanna, however, has informed on 24th November, 2018 that he does not stand by anything in his report and he is withdrawing from the assignment.

19. However, the Municipal Corporation has carried out the structural audit through its panel structural auditor and that report of “Space Design and Development” is on record, meaning thereby, the file is produced before us. The history of repairs shows that some repairs were carried out in the year 2016 but the slab has not been recasted, there is no column jacketing. The structural repairs may have been carried out and, particularly water proofing, plumbing may have been repaired, but the common passage purdi wall is replaced with railings. The

inspection was carried out on 19th September, 2015 and it is stated that the condition of the internal plaster sounds hollow. Signs of internal leakages, cracks and damages have been observed. The external plaster shows cracks and vegetation growth and leakages are observed in the plumbing. The chambers and the drain lines are in damaged condition and broken at several places. Thus, the report is that the R.C.C. members exhibit cracks, bulging and exposure of steel reinforcement. The overhead water tank/ column condition could not be observed as the terrace was locked. The R.C.C. chajjas exhibit cracks. Though the common passage beams and ceiling have been repaired, the purdi wall has been replaced with MS railings, but there are lot of internal leakages and what this report also says is that there is an exposure of steel reinforcement of R.C.C. members at few places. Bulging of concrete in R.C.C. members observed. There are cracks in columns and beams and steel reinforcement is exposed. This is the condition noted on the inspection of the building and even the test report indicates that the structure is weak. The conclusion that this expert or this agency reaches is that the categorization is C2-B. The occupants may not be evicted, but the building requires structural repairs.

20. After this report of 2nd November, 2017, which finds a reference in this Court's order of 29th November, 2017, this Court was specifically informed that the fourth respondent is not in a position to repair the building. He has filed this report, the contents of which have been exhaustively referred by us above. Yet, today, Mr.Havnur says that there are some talks going on and the arrangements can be finalised provided we grant some time.

21. We have noticed that a year and half has gone by from the report of the structural auditor engaged by the Municipal Corporation and the order of this Court. There are presently no repairs going on at site. There is no evidence of any reinforcement work going on either.

22. It is in these state of affairs we called upon Mr.Havnur to state whether the petitioners would on their own make the arrangements, raise the funds and thereafter, carry out the repairs, but in a given time frame. Else, the structure will be pulled down by the municipal officials.

23. We also made it clear to him that there is no question of Municipal Corporation again and again reminding the owners and the occupants of their duty to carry out the structural audit and thereafter the structural repair should that recommend the same. The Municipal Corporation having fulfilled its obligation, in

the facts of this case, it is for the occupants to make the necessary arrangements.

24. Since we have on record a report of 2nd November, 2017 of the structural auditor appointed by the Municipal Corporation, but finding that, till date, there is no progress nor repairs recommended by him have been carried out, we called upon Mr.Havnur to take instructions and forthwith make a statement.

25. On instructions, Mr.Havnur, makes a statement that the petitioners will, without prejudice to their rights and contentions to proceed against the fourth respondent, arrange for the funds and carry out the repairs, but he prays for a reasonable time. What is reasonable time in the given facts and circumstances is not for us to decide.

26. It is clear that persons are residing in the building at their risk and if they seek an opportunity for commencing the repair work afresh, then, they cannot request this Court to pass an order granting them time as demanded by them. Given that we are in the monsoon season and the building is already termed and declared as dangerous/ruinous or likely to fall, then, all the more, we are not inclined to grant a long time and, particularly, as long as desired by the petitioners.

27. In the facts and circumstances peculiar to this case and without this order being treated as a precedent, while we uphold the impugned notices and the actions proposed in furtherance thereof, we defer them for a period of two months to enable the petitioners to carry out the repairs as recommended by “Space Design and Development”, the structural auditor appointed by the Municipal Corporation and set out in detail in the report dated 2nd November, 2017. If this work is not commenced and completed, the Municipal Corporation can take the steps as are permissible in law.

28. It is clear that Municipal Corporation shall not be held responsible in any manner in the event, during the course of repairs, the building or the portion thereof collapses. If the carrying out repairs require refurbishing or restoration of the structure, then, that will be done by the petitioners at their own cost, charges and legal consequences. In the event, the structural repairs require the petitioners to vacate their premises/flat/unit and hand over peaceful possession thereof to the Contractor, then, even that has to be done by them. Their refusal would not in any manner prevent the Municipal Corporation to demolish the building/ portions thereof if it or they collapse in the meanwhile. Everything that is required to protect and save the lives of the

passers-by and those residing in neighbourhood, including the barricading and netting to be in place, would be at the cost, charges and consequences of the petitioners.

29. Let the Assistant Municipal Commissioner hand over the copy of the above noted report to the petitioners forthwith.

30. The writ petition stands disposed of in the above terms.

(G.S.PATEL,J.)

(S.C.DHARMADHIKARI, J.)