

2. On this limited point and when the larger challenge is given up, we have heard Mr.D'Souza at length.

3. The petitioners are shopkeepers. Their shops are located on ground floor of "Lata Kunj", 62 B, Kalina Kurla Road, Kalina, Mumbai - 400 029. This building is identified not only as old, but highly dilapidated, dangerous, ruinous and likely to fall. In the circumstances, allowing the petitioners to occupy this structure for a long time will not subserve the ends of justice.

4. In fact, the Mumbai Municipal Corporation has been calling upon the petitioners to carry out a structural audit in terms of Section 353-B of the Mumbai Municipal Corporation Act, 1888. The notice to that effect was issued on 5th January, 2017. The petitioners have not taken any remedial steps or measures. The only reply is that the petitioners' landlord failed and neglected to appoint a registered structural engineer. The petitioners appointed a registered structural engineer at their cost to carry out a structural audit. The report of that audit is also not of the nature demanded by law. It does not project, much less prove or establish, that the Municipal Corporation intentionally directed that an otherwise safe, sound and stable structure be pulled down or that it did so only to enable the owner to secure eviction of the petitioners from the subject premises without recourse to law.

This is an allegation of *mala fides*, and it is settled law that *mala fides* have to be first pleaded, and then established and proved. The unreasonableness and perversity of the nature demanded by law has also to be pleaded, established and proved. We do not think that the materials on record justify our interference in writ jurisdiction with the subject notices. Advisedly, therefore, Mr.D'Souza does not press the writ petition and so far as this challenge is concerned.

5. Once this issue, which challenges the notices, is given up, then, the continuation of the ad-interim order is not warranted. We direct the petitioners to vacate the premises in their possession within four weeks from today, failing which, the Municipal Corporation can seek police assistance and secure the petitioners' eviction forcibly. They can then be evicted by using such force as is necessary and the local police station shall render all assistance to the Municipal Officials and demolition squad in that behalf.

6. Needless to clarify that sub-section (5) of Section 354 of the Mumbai Municipal Corporation Act preserves the tenancy rights of the petitioners. Therefore, we need not pass any protective order.

7. While we dismiss this writ petition, we record that petitioner No.3 is no longer interested in occupying the premises and has surrendered his tenancy rights.

8. In the light of the disposal of the writ petition, the Notice of Motion does not survive and stands disposed of accordingly..

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)