

**APPEAL FROM ORDER (ST.) NO. 16 OF 2020
WITH
INTERIM APPLICATION NO. 01 OF 2019
IN
APPEAL FROM ORDER (ST.) NO. 16 OF 2020**

Mrs.Nisha Suresh Modi & Anr.	...	Appellants
V/s.		
Bombay Municipal Corporation & Ors.	...	Respondents

Mr.Rohan Savant a/w. Mr.Zeeshan Syed i/b. Jaykar & Partners for Appellants.
Ms.Madhuri More for Respondent Nos.1 to 3-Corporation.
Mr.Rohan Cama a/w. Mr.Harshil Panchal for Respondent No.4.

CORAM : A.S. GADKARI, J.

DATE : 8th January 2020.

P.C. :

1] By the present Appeal, the appellants have impugned Order dated 24th December 2019 passed in Notice of Motion No.1529 of 2015 in L.C. Suit No.1569 of 2015, dismissing the said Motion.

2] Heard Mr.Savant, learned counsel for the appellants, Ms.More,
learned counsel for the respondent Nos.1 to 3-Corporation and Mr.Cama,
learned counsel for the respondent No.4. Perused the entire record annexed to
the appeal.

3] The appellants have filed the aforestated Suit for declaration that, the Order dated 30th May 2015 bearing Reference No.AC/R/C-5625/BF passed by the respondent No.3 based upon the decision of the respondent No.2, dated 16th April 2015 is bad, illegal ab-initio, abuse of process of law, against the principles of law and for other consequential reliefs. The appellants also took out the aforestated Notice of Motion No.1529 of 2015 for interim reliefs. The Trial Court by its impugned Order dated 24th December 2019 has dismissed the said Notice of Motion No.1529 of 2014.

4] As on today, it is an admitted position on record that, the suit structure is in ruinous conditions. In Writ Petition No.223 of 2016 filed by the respondent No.4, the Division Bench of this Court in its Order dated 17th December 2019 has taken note of the same by appending photographs of the ruinous structure of the suit building to its Order. There is no dispute about the fact that the photographs appended to the said Order are of the suit property.

5] The respondent No.2 i.e. Technical Advisory Committee, after taking into consideration the reports of five different experts including the structural audit report carried out by the Professor of Veermata Jijabai Technological Institute (V.J.T.I.) Mumbai and after visiting the suit property on 4th April 2015 in its report dated 16th April 2015 has come to the conclusion that, the building is beyond repairs and not fit for human habitation and therefore must be immediately evacuated and pulled down by following due

process of law under the supervision of structural consultants. The Order dated 30th May 2015 has been passed by the respondent No.3 under Section 354 of the Mumbai Municipal Corporation Act (for short, “MMC Act”) in pursuance of the report dated 16th April 2015 submitted by the respondent No.2.

6] The learned counsel appearing for the appellants submitted that, the respondent No.2 while submitting the said report dated 16th April 2015 did not comply with the directions issued by this Court in Writ Petition No.2765 of 2014. He submitted that, the respondent No.2 did not itself carry out necessary and requisite tests before forming its conclusion. He submitted that, as per the report submitted by their expert, the building can be repaired and can be made habitable for a further period of 10 to 15 years. He further submitted that, there is a dispute between the landlord and the developer which has caused a stalemate and therefore, there is no possibility of re-development of the said property. That, in view thereof, the appellants being tenants of the said suit premises are the ultimate sufferers. He submitted that, therefore, the impugned Order may be set-aside by allowing present appeal.

7] Per contra, learned counsel appearing for the respondent Nos.1 to 3-Corporation submitted that, before forming its opinion in its report dated 16th April 2015, the respondent No.2 had visited the suit premises and has heard all the concerned in the matter. That the respondent No.2 has also taken into consideration all the reports submitted by the experts which are on record. She

further submitted that, the building is in extremely ruinous condition and therefore, the Corporation has issued the aforestated notice dated 30th May 2015 under Section 354 of the MMC Act. She therefore prayed that, the appeal may be dismissed.

8] Mr.Cama, learned counsel appearing for the respondent No.4 submitted that, as a matter of fact, the appellants have already vacated the suit premises and are not residing therein. He submitted that, the appellants have kept some of their belongings in the suit premises, however they are not residing there. He submitted that, the appellants, only with a view to cause harassment and/or with ill motive have filed various proceedings including the present Appeal and therefore, the present appeal may be dismissed summarily.

9] The aforestated Order dated 17th December 2019 passed in Writ Petition No.223 of 2016 is produced on record by Mr.Cama. As noted earlier, the Division Bench of this court has taken into consideration the ruinous condition of the suit building. The record further clearly indicates that, the respondent No.2-Committee before forming its conclusion has visited the suit premises on 4th April 2015 and after hearing the tenants as per the directions of this Court in Writ Petition No.2765 of 2014 has formed its opinion that, the building is not fit for repairs and not fit for human habitation. The Order dated 30th May 2015 passed by the respondent No.3, under Section 354 of the MMC Act, is a consequence of the report submitted by the respondent No.2. As the

suit building is in ruinous condition and unfit for human habitation, there is no question of granting any interim relief to the appellants. If the appellants are permitted to reside in the suit premises and in case any untoward incident takes place, it may cause damage or harm not only to the life and property of the appellants but also the persons in the adjoining buildings. In view thereof, there is no question of granting interim relief to the appellants as prayed for.

10] In view of the above, this Court is of the considered opinion that, the Trial Court has rightly dismissed the Notice of Motion filed by the appellants. There is no error, either in law or on facts committed by the Trial Court while passing the impugned Order dated 24th December 2019.

11] There are no merits in the Appeal. Appeal is accordingly dismissed.

12] In view of disposal of the Appeal, nothing survives in the Interim Application and is accordingly disposed off.

[A.S. GADKARI, J.]