

Tandle

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (ST) NO. 348 OF 2020
WITH
INTERIM APPLICATION NO. 01 OF 2020
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Smt. Sushilaben Pranji Thakkar and Ors.

... Appellants/
Applicants.

Versus

B. M. C. and Ors.

... Respondents.

Mr. Shivajirao Patil for the Appellants in both the matters.

Ms. Oorja Dhond for the Respondents-MCGM in both the matters.

Mr. Dharmesh S. Jain i/b Ms. Divya Sanghi for Respondent No.4 in both the matters.

Mr. R. Varma a/w Aditya Marwal i/b Navdeep Vora & Associates for Respondent No.6 in both the matters.

CORAM : A. S. GADKARI, J.

DATE : 30th JANUARY, 2020

P.C. :

1. By the present appeals the appellants have impugned Order dated 24th December 2019 passed in Notice of Motion No. 9 of 2014 in L.C. Suit No. 2648 of 2013 and Notice of Motion No.2280 of 2015 in L.C.

Suit No. 1409 of 2014 by the learned Judge, City Civil & Sessions Court, Borivali Division, Mumbai, thereby dismissing the Notice of Motion No. 9 of 2014 in L.C.Suit No. 2648 of 2013 and partly allowed the Notice of Motion No. 2280 of 2015 in L.C. Suit No.1409 of 2014. While partly allowing the said Notice of Motion No. 2280 of 2015 in L.C.Suit No.1409 of 2014, the Trial Court has restrained the respondent-Corporation from disconnecting the water supply of the appellants in L.C. Suit No. 1409 of 2014 till one day prior to their eviction from the suit building.

2. Heard Mr. Patil, learned counsel for the appellants, Ms. Dhond, learned counsel for the respondents-MCGM, Mr. Jain, learned counsel for the respondent No.4 and Mr. Varma, learned counsel for respondent No.6. Perused the entire record annexed to the appeals.

3. Mr. Patil learned counsel for the appellants submitted that, the appellants are residing in 'A' wing of the suit building and the same is safe for human habitation and appellants may be permitted to reside therein. He submitted that, photographs appended to the Order dated 17th December 2019 passed by Division Bench of this Court in Writ Petition No.223 of 2016 are of 'B' and 'C' wing and the appellants are not residing in the said wings. He submitted that, 'A' wing wherein the appellants are residing is fit for human habitation. He submitted that, the Trial Court has not taken into consideration this vital aspect of the matter while dismissing the Notice of Motion No. 9 of 2014 in L.C. Suit No. 2648 of 2013 preferred by the appellants. He submitted that, the impugned

Order, therefore, may be quashed and set aside by allowing present appeals.

4. Per contra, learned counsel for the respondents vehemently opposed the Appeals and submitted that, in an appeal arising out of the same impugned Order dated 24th December 2019, in Appeal from Order (St) No. 16 of 2020, this Court has already dismissed the same by its Order dated 8th January 2020 and therefore there are no merits in the present appeals also and the same may be dismissed summarily.

5. It is to be noted here that, by the impugned Order dated 24th December 2019, the Trial Court has disposed of Notice of Motion Nos. 2243 of 2015, 2280 of 2015 in L.C. Suit No. 1409 of 2014 and Notice of Motion No.1529 of 2015 in L.C. Suit No.1569 of 2015. That the appellants/ tenants in L.C. Suit no.1569 of 2015 had also challenged the present impugned Order dated 24th December 2019, dismissing their Notice of Motion No. 1529 of 2015. This Court by its Order dated 8th January 2020 has dismissed the said Appeal.

6. As of today, it is an admitted position on record that, the suit structure is in ruinous condition. 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.

7. 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 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.

8. The Order dated 17th December 2019 passed in Writ Petition No. 223 of 2016 holds field as of today. 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 Mumbai Municipal Corporation Act, 1888

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.

9. 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.

There are no merits in the Appeals and the same are accordingly dismissed.

10. In view of disposal of Appeals, nothing survives in both Interim Applications filed therein and are accordingly disposed off.

(A. S. GADKARI, J.)