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

WRIT PETITION (L) NO. 5 OF 2020

Prakash Laxman Tawde & Ors.

...Petitioners

vs

Maharashtra Housing & Area Development Board
& Ors.

...Respondents

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Mr. Atul Damle Sr. Counsel a/w Mr. S.M. Sabrad a/w Amey Sawant for the
Petitioners

Mr. P.G.Lad a/w Priyanka Naik for Respondent Nos.1 and 2/ MHADA.

Mr. Karl Tamboly a/w Arun Panickar for Respondent No.3.

Mr. Prateek Seksaria a/w Nivit Srivastava, Sneha Patil i/b Maniar Srivastava
Association for Respondent No.4.

Mr. N.R. Bubna a/w Sheetal Metkari for Respondent No.7 / M.C.G.M.

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**CORAM : S. J. KATHAWALLA &
B. P. COLABAWALLA, JJ.
DATED 3RD JANUARY , 2020.**

P.C. :

1. The above Writ Petition is filed by sixteen out of forty members of Building No. 15, Durvankur Co-op. HSG Society, D.N. Nagar, Ganesh Chowk, Andheri (West), Mumbai. Out of forty members, thirty members have already vacated the premises in their occupation and have started residing elsewhere. We are informed by the Society/ Respondent No.3 that out of sixteen members, six members have already vacated the premises in their occupation. This statement is disputed by Petitioner No.1. What is important to note in this matter is that admittedly on 6th November, 2019 a slab on the first floor of the subject building

has fallen injuring three occupants who were required to be hospitalized. It is also important to note, at the outset, that the Society has opposed this Writ Petition and have submitted that this Writ Petition is filed by a minority group of members who are opposing the redevelopment of the subject building, which is in extremely dilapidated condition.

2. The brief facts in the matter are set out hereunder :

3. On 28th January, 2017 pursuant to the notice issued by the Municipal Corporation of Greater Mumbai (MCGM) under Section 353 (b) of the Mumbai Municipal Corporation Act, 1888 (for short “**the Act**”), the society submitted the Structural Audit Report dated 20th February, 2017 to the Municipal Corporation. The said report is prepared by Shri. Nilesh Pandit, Structural Engineer of Space Design and Development, wherein he has recommended that “**the building should carry out major repairs commencing within 3 to 4 months from submission of this report and completing within six months’ time frame.**”. The said time frame given by the Structural Engineer came to an end sometime in July, 2017.

4. Since, no repairs were carried out, the Municipal Corporation issued second notice to the Society/Respondent No.3 dated 18th May, 2018, once again requesting the society/Respondent No.3 to carry out fresh structural audit and submit the report at the earliest. The Society once again submitted a Structural Audit Report of the same Structural Engineer Shri Nilesh Pandit of Space Design

and Development, who now recommended that **“the structure should be vacated on immediate basis within 1 (one) months time frame from submission of this report and after propping the structure, major structural repairs and tenantable repairs should be carried out within 4 months’ time frame from the time of submission of the Audit Report.”** Again the recommendations of the Structural Engineer of the Society were not followed, may be because the society was not having enough funds to carry out such extensive repairs.

5. The Municipal Council once again issued notice dated 28th December, 2018 to the Chairman/Secretary of the society/Respondent No.3 setting out therein that the society was called upon to carry out the structural repairs by a letter dated 18th May, 2018 and in reply to the letter the society has submitted Structural Audit Report of Space Design & Development stating that the building is in C2-A category to be evacuated on immediate basis within one month’s time frame from submission of the report and major structural repairs was required to be carried out. The Municipal Corporation further recorded that on routine site inspection the society has not evacuated the building nor repaired the building. It was further recorded that the condition of the building is very dilapidated and dangerous for human life and the validity of this report has expired and the society was once again requested to carry out fresh Structural Audit and submit the report to MHADA as now MHADA is the planning authority for MHADA layout. The Municipal Corporation also directed the Society to take

necessary preventative measures such as barricading, propping etc. and provide cautionary board that **“the structure is in dangerous condition”** which will be helpful to passersby to avoid any mishap, till evacuation and or demolition.

6. Since no steps were taken by the society despite warning of the Structural Engineers recorded in their two earlier reports dated 20th January, 2017 and 12th June, 2018, the same Structural Engineers once again examined the building and submitted the third report with the following conclusion :

“The said building with the passage of time has been severely deteriorated and at present is in complete dilapidated, ruinous condition and beyond repairs. Considering the findings of the preliminary investigation and analysis of Non Destructive Tests, we have found that RCC beams, columns and slabs of the building are in severely deteriorated condition and the distress signs are due to extensive corrosion of the steel reinforcement, severe leakages. Few of the RCC members are in dangerous condition. Severe Vegetation growth observed on the external face of the building. The building is thus is unsafe for the intended purpose/ habitation as the structure is now beyond repairs. Hence, it can be concluded that the said building is in non-repairable, dilapidated and dangerous condition. Moreover in the monsoon as the self-weight of the structure is increased drastically, thus may eventually lead to further collapse of the building and any mishap would cause damage to mas public.”

7. By a resolution dated 25.11.2018, the Society appointed Respondent No.4 as developers to redevelop the building. After falling of the slab on the first floor injuring three individuals, thirty out of forty members vacated the building in November 2019. On 12.12.2018 a complaint was filed by the Petitioners impugning the said resolution before the Deputy Registrar, Co-operative Societies, K-West

Ward. On 4.5.2019 a Show Cause Notice was issued by the Deputy Registrar, Co-operative Societies to the society/Respondent No.3. Since the society/Respondent No.3 informed the Deputy Registrar that they are willing to hold Special General Body Meeting, the Deputy Registrar by its order dated 9th October, 2019 withdrew the Show Cause Notice and directed the Society / Respondent No.3 to hold a Special General Body Meeting as agreed by Respondent No.3. Respondent No.3 circulated its agenda on 1st December, 2019 and fixed the meeting on 15th December, 2019. However the Petitioners, for reasons best known to them, did not attend the meeting and ensured that the meeting was not held for lack of quorum.

8. In the meantime, as stated earlier on 6th November, 2019, the slab on the first floor collapsed thereby injuring three of the occupants who were required to be hospitalized. Warning of such mishap was already given by the Structural Engineer of the Society / Respondent No.3 as reproduced herein above. In response to the notices issued by the Corporation dated 14th May, 2019 and 7th November, 2019 calling upon the society/ Respondent No.3 to forthwith vacate the subject building, thirty members out of forty members have vacated the building, however the Petitioners have ignored the same. On 23rd December, 2019, MHADA disconnected the electricity connection and water supply to the subject building. Thereupon, the Petitioners filed the above Writ Petition seeking following reliefs.

- “(b) *This Court be pleased to issue writ, certiorari and/or any other writ, order or direction in the nature of certiorari and thereby be pleased to quash and set aside the impugned action on the part of the Respondent Nos.1 and 2 herein in issuing notices and categorizing the Building No.15, D.N.Nagar, Ganesh Chowk, Andheri (West), Mumbai 400 053 as “C-1” category completely contrary to the directions and guidelines laid down by this Court and this Court further be pleased to permit the Petitioners herein to carry out the repairs of the said Building No.15, D.N.Nagar, Ganesh Chowk, Andheri (West), Mumbai 400 053, at their own costs and expenses.*
- (c) *In the alternative, this Court be pleased to direct Respondent Nos.1 and 2 to provide alternative accommodation to the Petitioners in the event if it is found that the said building No.15 is beyond repairs and the said building No.15 needs demolition.”*

9. The learned Senior Advocate appearing for the Petitioners has submitted that the notices issued by the Municipal Corporation are under Section 353(b) of the Act by which the society/ Respondent No.3 was called upon to repair the building as submitted in the Structural Audit Report. No notice under Section 354 of the Act has been issued. It is also submitted that even after MHADA took over as the Planning Authority, no notice has been issued under Section 88 of the MHADA Act, 1976. He has also submitted that if it is found that the building is beyond repairs and the said building needs to be demolished, MHADA should provide alternate accommodation to the Petitioners.

10. The learned Advocate appearing for MHADA has submitted that Section 88 of the MHADA Act, 1976 will not apply to the subject building because the said Section is applicable only to Cess buildings; MHADA is only required to give permission for redevelopment of the building under DCR 33 (5).

11. The learned Advocate appearing for the Municipal Corporation has submitted that the Petitioners being minority members of the Society have no locus to file the above Writ Petition. It is submitted that since the Structural Engineer of the society has from time to time given his reports setting out the time frame for repairs of the building and the repairs not being carried out, the Structural Engineer in his last report dated 18th January, 2019 has himself recommended that the building should be demolished. The first floor slab of the building has already collapsed injuring three individuals who were required to be hospitalized and the Petitioners now cannot be heard to say that further notice should be issued to the society/ Respondent No.3 without which they cannot be called upon to vacate the premises.

12. The learned Advocate for the society / Respondent No.3 has submitted that the Petitioners have no locus to file the above Petition and they ought to support the majority decision taken by the majority members which is in the interest of all the members and their family members. It is submitted that if the building is not demolished the same will collapse any moment causing grave loss and damage to human lives as well as property. It is submitted that a serious mishap has already taken place on 6th November, 2019.

13 We have gone through the Writ Petition and its annexures and have considered the submissions of the learned Advocates for parties as set out herein above. The Structural Auditor of the Society/ Respondent No.1 by his report

dated 20th February, 2017 has recorded that the building can be repaired without being vacated. The time frame given by the Structural Auditor was of six months. Since, no repairs as advised were carried out, the same Structural Engineer thereafter in his fresh report dated 12th June, 2018 recommended that the building now needs to be vacated and repaired and the same should be done within a period of one month from the date of his report. Since the repairs were once again not carried out as advised, the same Structural Engineer then categorized the subject building as C1 and have recommended immediate demolition. His recommendations are, at the cost of repetition, once again reproduced herein:-

“The said building with the passage of time has been severely deteriorated and at present is in complete dilapidated, ruinous condition and beyond repairs. Considering the findings of the preliminary investigation and analysis of Non Destructive Tests, we have found that RCC beams, columns and slabs of the building are in severely deteriorated condition and the distress signs are due to extensive corrosion of the steel reinforcement, severe leakages. Few of the RCC members are in dangerous condition. Severe Vegetation growth observed on the external face of the building. The building is thus is unsafe for the intended purpose/ habitation as the structure is now beyond repairs. Hence, it can be concluded that the said building is in non-repairable, dilapidated and dangerous condition. Moreover in the monsoon as the self-weight of the structure is increased drastically, thus may eventually lead to further collapse of the building and any mishap would cause damage to mass public.”

14. The society/ Respondent No.1 itself has accepted that the building is in ruinous condition and the same needs to be vacated and demolished. Thirty out of forty members have according to the society/ Respondent No.3/ already

vacated their respective premises. There is no report submitted on behalf of the Petitioners setting out that the building is not required to be demolished. Instead, the Petitioners have in the alternative prayed that this Court be pleased to direct Respondent Nos.1 and 2 to provide alternative accommodation to the Petitioners in the event if it is found that the said building No.15 is beyond repairs and the said building needs demolition.

15. The Petitioners by their complaint/application filed before the Deputy Registrar, Co-operative Societies K-Ward, made a grievance that the society / Respondent No.3 has appointed a developer without following the required procedure. Pursuant to the show cause notice issued by the Deputy Registrar, Co-operative Societies, the society/ Respondent No.3 agreed to call the Special General Body Meeting, but the Petitioners chose to remain absent in the meeting which was called by the society, thereby ensuring that the meeting is not held for lack of quorum. The Petitioners conduct therefore, lacks bonafides and smacks of malafides.

16. Admittedly, the mishap took place on 6th November, 2019 injuring three occupants who were required to be hospitalized. The Structural Audit Reports of the society given by the same Structural Engineer, from time to time suggests that repairs were required to be carried out within the suggested time frame. However, no repairs were carried out by the society/ Respondent No.3 compelling the same Structural Engineers to recommend immediate demolition of

the building. The question of now directing the Municipal Corporation or MHADA to issue any further notices to the Society and waiting for their response would tantamount to inviting further major mishaps qua the subject building.

17. It is because of the conduct of the members of the society like the Petitioners who at every stage oppose demolition of the dilapidated building, we from time to time are pained to note several incidents of collapse of unsafe building, resulting in loss of life and property. In fact in the instant case the mishap as stated herein above has already taken place causing injury to three of the occupants who were required to be hospitalized. Since the Structural Engineer appointed by the society himself has opined in his report that the subject building is required to be demolished, we cannot allow any of the tenants/ occupiers to continue their stay in the subject building and take the risk of losing their lives and property. We, therefore, dismiss the above Writ Petition with direction to the Municipal Corporation / MHADA to proceed with the matter in accordance with law.

18. The learned Senior Advocate appearing for the Petitioners states that the Petitioners accept the decision of this Court and are not desirous of testing the order any further. They have requested the Court to grant them four weeks time to remove their belongings and shift to an alternate premises. They agree to forthwith give a written undertaking to this effect.

19. In view thereof, the Petitioners shall forthwith give written

undertaking to the above effect which upon being filed will be accepted by this Court and the Corporation will proceed with the demolition on 31st January, 2020.

(B. P. COLABAWALLA, J.)

(S. J. KATHAWALLA, J.)