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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10819 OF 2021

Deepak s/o Rasiklal Gandhi

PETITIONER

VERSUS

The Municipal Council, Amalner and Others

RESPONDENTS

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Mr. B. R. Warma, Advocate for the petitioner

Mr. M. M. Patil (Beedkar), Advocate for respondent No.1

Mr. D. L. Khivsara and G. D. Jain, Advocate for respondent No.2

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 4th AUGUST, 2022

ORDER :

1. At the outset, learned advocate for the petitioner seeks leave to correct. Leave granted.

2. This petition, filed under Article 227 of the Constitution of India, takes exception to the judgment and order passed by the learned 2nd Joint Civil Judge, Junior Division, Amalner below Exhibit-6 in Regular Civil Suit No. 48 of 2017 thereby refusing temporary injunction in favour of the petitioner, which is confirmed by learned District Judge-1, Amalner in Miscellaneous

Civil Appeal No. 4 of 2018.

3. The suit property consists of ground plus one floor with construction on southern side to the extent of 10 X 60 and toilet of 10 X 10 size is constructed in the open space on the eastern side, situated at Town Planning No. 47/5, Amalner, totally admeasuring 40.60 square meter.

4. In the suit, the petitioner challenged notices dated 1st June, 2017 and 6th May, 2017 issued by the Municipal Council, for demolition of dilapidated portion of the suit property. The petitioner claims that the landlords, in collusion with the Municipal council authorities, trying to demolish both the floors of the suit property, when only the first floor is in dilapidated condition and can be demolished. By application Exhibit-6, the petitioner prayed for temporary injunction that the defendants shall not illegally demolish the suit property, during the pendency of the suit. The respondents Municipal Council as well as the landlords resisted the claim of the petitioner by filing respective written statement specifically contending that the suit property is a dangerous building and it may fall down at any time. The possibility of loss of lives cannot be ruled out. Considering these aspects, notices have been issued to the landlords and there is no collusion between the defendants. The

Trial Court, after hearing the parties, rejected the application Exhibit-6. Challenge raised by the petitioner to the said order passed by the Trial Court is negated by the District Court in Miscellaneous Civil Appeal No. 4 of 2018. Both these orders are challenged in the present writ petition.

5. Heard learned advocate for the petitioner and learned advocates for the respondents.

6. Learned advocate for the petitioner vehemently submitted that in terms of section 195 (2) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, (hereinafter for brevity "the said Act") the Chief Officer ought to have required the owner or the occupier to repair the said building / structure. However, instead of doing that notice for demolition is issued, which is not justified in the facts of the present case. He further insists that at the time of the demolition, the petitioner be permitted to appoint a private architect, who shall supervise the demolition process.

7. Learned advocates for respondents No. 1 to 3, on the other hand, supported the impugned orders.

8. Sub Section (2) of section 195 of the said Act, provides thus -

“(2) The Chief Officer may also, if he thinks fit, require the said owner or occupier, by the said notice, either forthwith or before proceeding to put down, secure, remove or repair the said building, structure or thing, to set up a proper and sufficient board or fence for the protection of passers by and other persons”

9. From the plain reading of sub section (2) of section 195 of the said Act, it is clear that it is within the powers of the Chief Officer to invoke said provision and require the owner either to put down, secure, remove or repair the building.

10. The record indicates that the building in question is more than 60 years old and it is a load bearing structure. The Chief Officer has issued notices to the respondents No. 2 and 3 landlords for demolition of the said structure, on the basis of reports submitted by its Engineer and Surveyor.

11. In the first report dated 31st March, 2017, damage to the first floor is mentioned. The report further mentions that since the petitioner resisted, the basement and the portion occupied by the petitioner could not be accessed for inspection.

In the second report dated 3rd August, 2021, it is mentioned that two rooms at the basement have developed cracks, one wall on the ground floor has completely fallen,

gallery on the first floor is decaying and water is percolating and walls on the passages have also fallen at many places. Thus, the Municipal Council authorities have opined that the entire structure is dilapidated and ruinous.

12. In the light of the above facts, no fault can be found with the discretion exercised by the Chief Officer directing demolition of the suit property.

13. The second argument of the petitioner that the petitioner may be permitted to appoint his own architect to supervise the demolition process, cannot be accepted in absence of pleadings in plaint, interim injunction application as well as in the Miscellaneous Civil Appeal, so also in the present writ petition.

14. The petitioner is entitled to appoint his own architect to supervise the demolition process, however, the architect shall not, in any manner, interfere in the demolition process.

15. Both the Courts below have recorded concurrent finding of fact, which is not not liable to be interfered with in the extraordinary writ jurisdiction.

16. No case is made out by the petitioner to exercise extraordinary writ jurisdiction to interfere in the impugned

orders. Writ petition being devoid of merit, is dismissed.

17. The observations made in this order are *prima facie* and shall not come in the way of the petitioner, in case the petitioner seeks amendment to the pleadings.

[NITIN B. SURYAWANSHI]
JUDGE

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