

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 196 OF 2021
WITH
INTERIM APPLICATION NO. 1892 OF 2021

Jayantilal Mishrimal Shah

Appellant /
.. Applicant

Versus

Municipal Corporation of Greater Mumbai &
Anr.

.. Respondents

-
- Mr. Pradeep Thorat a/w Mr. Ansari Sahil for the Appellant
 - Mr. Om Suryawanshi for the Respondents - MCGM
-

CORAM : MILIND N. JADHAV, J.

DATE : JULY 21, 2022

P.C.:

- 1.** On 04.05.2022, this court passed the following order:-

“1. Technical Advisory Committee (TAC for short), vide report dated 24th January, 2020, classified the suit building in C/1, Category i.e. dangerous and dilapidated building. It was followed by notice under Section 354 of MMC Act. Plaintiff - Noticee, questioned the correctness of report of TAC and validity of Notice under Section 354 of MMC Act. In the suit, trial Court declined to restrain the Corporation from taking the coercive steps pursuant to notice under Section 354 of MMC Act. That order is challenged in this Appeal from Order. It is appellant's contention that the suit structure was substantially repaired before issuing a notice under Section 354 and this fact was not considered by the Trial Court.

2. Mr. Sirsakar, learned counsel for the Corporation seeks time to verify this fact and to ascertain whether is it possible for the TAC to re-inspect the building in question, and submit the structural audit report afresh.

3. For these reasons, stand over to 21st June, 2022 for further consideration. Till then, ad-interim relief granted earlier on 28th September, 2021 shall continue to operate.

4. Pending appeal, the Appellant has filed affidavit cum undertaking to state that he will continue to reside in the said building with family members at his own risks and consequences. Affidavit is taken on record and marked 'X-1' for identification.”

2. Mr. Thorat, learned counsel appearing along with Mr. Ansari for the appellant has drawn my attention to paragraph 2 of the order wherein Corporation was directed to re-inspect the subject building and submit the structural audit report afresh through Technical Advisory Committee (“TAC”).

3. Mr. Suryawanshi, learned counsel appearing for the respondent – Corporation has placed on record a communication dated 20.07.2022 signed by the Assistant Engineer (Bldg. & Fact.) III, ‘N’ Ward which states that Corporation has received the structural audit report submitted by the owner of the building on 17.06.2022 and the report is being referred to TAC for further directions.

4. If the structural audit report submitted by the owner on 17.06.2022 is not yet sent to TAC, the same shall be sent by the Corporation immediately. It is directed that the directions contained in paragraph 2 of the order dated 04.05.2022 be complied with by the Corporation in its true letter and spirit on or before the next date.

5. Mr. Thorat fairly submits that TAC may require time to come and inspect the subject building, thereafter hold a hearing and also consider the structural audit report submitted by the owner and only thereafter, the TAC structural audit report as directed by this court can be submitted. Mr. Suryawanshi agrees with this procedure and hence prays for some time for compliance.

6. In view of the above, Corporation is directed to send the structural audit report submitted by the owner to TAC immediately with instructions to TAC to conduct the inspection of the building within a period of three weeks from today. The structural engineer who has prepared the structural audit report submitted by the owner along with the owner / representative of the owner of the building may remain present at the time of inspection by TAC. The date and time of inspection by TAC shall be informed three days in advance in writing to the owner of the building.

7. In view of the above order / directions, the impugned notice dated 18.05.2020 does not survive if the above exercise is carried out.

8. Appeal from Order stands disposed of. Interim Application No. 1892 of 2021 also stands disposed of. The suit filed in the trial court also stands disposed of.

9. Liberty to the Corporation to take appropriate steps in accordance with law after receipt of the fresh TAC report after completing the above exercise.

[MILIND N. JADHAV, J.]

Digitally
signed by
RAVINDRA
MOHAN
AMBERKAR
Date:
2022.07.23
10:33:48
+0530