

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO.1045 OF 2022
WITH
INTERIM APPLICATION NO.19811 OF 2022**

Adinath Maruti Ambhore & Anr. ..Appellants
Versus
Municipal Corporation of Great Bombay ..Respondent

**WITH
APPEAL FROM ORDER NO.256 OF 2021
WITH
INTERIM APPLICATION NO.2308 OF 2021**

Rajmohan Selvaraj & Anr. ..Appellants
Versus
Municipal Corporation of Greater Bombay ..Respondent

Mr. Sahil Mahajan, for the Appellants in both Appeals.
Mr. R. Y. Sirsikar, for the Respondent Nos.1 & 2/MCGM.
Dr. Birendra Saraf, Senior Advocate a/w Kushal Amin i/by Gurubala
Birajdar, for the Respondent No.4.

CORAM : NITIN W. SAMBRE, J.

DATE : 30th NOVEMBER, 2022

P.C.

1. Learned counsel for the appellants on instructions does not press the appeal for and on behalf of the appellant No.2. As such, the appeal stands dismissed on behalf of the appellant No.2.

2. The present appeal has questioned the very legality of the

order dated 26th February, 2021 passed by the City Civil Court in the proceedings taken out by the appellants questioning the legality and validity of the notice under Section 354 of the Mumbai Municipal Corporation Act (“MMC Act” for short) as the structure is categorized to be dangerous and not fit for human habitation. In the said suit, questioning the aforesaid notice, the appellants have taken out notice of motion seeking injunction against the respondent which is rejected vide order impugned dated 26th February, 2021.

3. Contentions of counsel for the appellants are, the Technical Advisory Committee of the respondent/corporation while evaluating stability of the disputed structure has failed to consider the report of the expert submitted by the appellants and has erroneously recorded findings that the suit structure is dangerous one and not fit for human habitation.

4. According to him, the appellants have taken out the structural audit report from the expert as regards the stability of the suit premises, which is ignored by the respondent/corporation and the notice under Section 354 of the MMC came to be issued.

5. So as to justify the aforesaid claim, counsel for the appellants has invited my attention to the map depicting the location of the structure, the observations made in the impugned order.

6. While supporting the order impugned, Dr. Birendra Saraf, learned senior counsel would urge that what is questioned in the suit is not the notice under Section 354 of the MMC Act issued on 2nd July, 2020, but the communication dated 11th January, 2021 issued by the Designated Officer, Office of Executive Engineer, West Ward. According to him, in the absence of the challenge to the notice under Section 354 of the MMC Act, the very proceedings are not maintainable. He would then urge that the validity of the report submitted of the appellants is only for a period of one year, as this could be inferred from the perusal of the structural audit report produced by the appellants. Dr. Birendra Saraf would then invite my attention to the observations made in the impugned order in relation to the location of the adjoining structures, the visit carried out based on the audit report and the findings recorded therein. According to him, once the expert committee has given a report, then this Court cannot substitute its decision. As such, he has sought dismissal of the appeal.

7. Having appreciated the submissions, what can be noticed is, the appellants have not questioned the very notice issued under Section 354 MMC Act, what is questioned is the subsequent communication. Apart from above, the structural audit report submitted by the appellants, which they have relied on during the course of arguments speaks of its validity only for a period of one year from the date of its issuance. M/s. Orchid Consultants which

has carried out audit on behalf of appellants in categorical terms speaks that the validity of the said report is restricted to one year from 24th June, 2019 that is the report is valid till 24th September, 2020.

8. The Technical Advisory Committee report in the case in hand is that of 19th June, 2020. The Technical Advisory Committee appears to have personally visited the spot of the incident based on the two structural audit reports viz. M/s. Manohar Ashatavadhani & Associates and M/s. Crown Consultant which is given by 22 tenants. Based on the said two audit reports and the report of Technical Advisory Committee consisting of expert have recorded finding viz. having noticed major cracks in walls at many locations, not carrying out of repairs to the structures for quite long period, cracks in the columns, staircase, slab, the dilapidated condition of the staircases and as such recorded its findings which reads thus :-

“The present TAC has reviewed all the reports that are submitted in this case. After comparing all the above reports and specially looking into the test results of the latest report of M/s. Crown Consultant Architect & Structural Engineer. And also, found observations during the visual inspection of site. TAC has come to conclusion that, the owner and tenants of the subject buildings have failed to carry out proper maintenances of their structures over long period; even though, by Certificate of Stability dated 13.11.2015. M/s. Crown Consultant Architect & Structural Engineer, has been warned that, the subject structures is stable upto next 5 years. Provided that they shall carry out civil & structural maintenances work mentioned therein at every year. As

result structures have deteriorated considerably. Also, the estimate submitted by M/s. Crown Consultant Architect & Structural Engineer cannot be relied upon. Since he failed to justify the same.

In view of the above circumstances and proceeding of the meeting as well as, consistently week result of UPV test; the TAC has unanimously opines that the subject R.C.C. buildings comprising G+1 & G+2 known as “Vishram (Mahavir) Baug” constructed on the Plot of land bearing CTS 792 situated at near Railway Station, P. L. Lokhande Marg, Chembur, Mumbai – 89 in M/West Ward are structurally deteriorated and are found in dilapidated condition. The buildings may collapse without giving any warning thereby endangering life & property of occupants of the said buildings and also to the occupants in the subject structures adjoining to the said buildings and passers thereby as well.

Under the above facts, it is unanimously declared that, said buildings & adjoining structures falls under C-I Category.

In view of this circumstances, urgent necessary action shall be initiated by the M/West staff as per the policy and guidelines issued in this regards and vacated and demolish the subject structures under reference, immediately to avoid any untoward incidence in future.

Further, in the meantime, Owner/ Occupier shall be directed to take necessary preventive measures such as propoing, barricading etc. and should vacate their structure immediately; if Owner/ Occupier fails to do so as per the above direction; then they will be held responsible for any mishap.”

9. In the aforesaid background, it cannot be said that the

Technical Advisory Committee has not taken into account the very status/structural stability of the structure occupied by the appellants. Apart from above, the Court has to be sensitive to the fact that the appellant No.2 has already agreed to vacate the premises and not press the present appeal. The present appellant No.2 is occupying part of the very same premises which are occupied by the appellant No.1. As such, the appellant has accepted the very notice issued under Section 354 of the MMC Act based on the very same report of the Technical Advisory Committee. As such, no case for showing indulgence thereby granting injunction is made out. The Appeal as such stands rejected.

10. It is also not disputed position on record that the parties have already entered into an agreement for providing permanent alternate accommodation to the appellants.

11. As far as the Appeal No.256 of 2021 is concerned, admittedly the report submitted by the tenant is duly taken into account by the Technical Advisory Committee while carrying out site visit for evaluation of the structure. The said report submitted by the consultant is duly taken into account. At once it is stated in the Technical Advisory Committee report that if the visual inspection of the premises is carried out, then it cannot be said that the claim put forth by the appellants about non-performing of certain tests i.e. Ultrasonic Pulse Velocity Test, Rebound Hammer Test, Half Cell

Potential, Core Test, Carbonation Depth and Chemical Analysis are not carried out. Rather the report of structural audit speaks of carrying out of relevant tests. In the aforesaid background, even in the present appeal, no case for showing indulgence is made out. The appeal as such stands rejected.

12. In view of rejection of the appeals, pending interim applications also stand disposed of.

13. The claim put forth by the appellants that the interim order passed by this Court should continue for two weeks is resisted by the counsel for the respondent Dr. Birendra Saraf. However, considering the nature of claim and the fact that the appellant No.1 is residing in the suit premises, the same is continued for a period of two weeks.

14. Counsel for the appellants submits that the appellants shall vacate the suit premises within four weeks, provided the respondent/corporation or the developer shall not take any steps in the matter. Subject to furnishing an undertaking to that effect, the protection ordered by this Court is continued for a period of four weeks.

[NITIN W. SAMBRE, J.]