

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.220 OF 2020
WITH
INTERIM APPLICATION NO. 3817 OF 2020
IN
APPEAL FROM ORDER NO.220 OF 2020

Valiben Mayalal Chhadva .. Appellant

Versus

Municipal Corporation of Gr.Mumbai .. Respondents
thru Municipal Commissioner & ors

...

Mr. Vivek Shukla i/b V. Shukla & Associates for the appellant.
Mr.Gauraj Shah with Mr.V.A. Joshi i/b Chitnis Vaithi & Co. for
respondent no.5.
Mr. Om Suryavanshi for respondent MCGM.

CORAM: BHARATI DANGRE, J.
DATED : 4th APRIL, 2022

P.C:-

1 Heard learned counsel for the respective parties.

2 The present Appeal is filed, being aggrieved by rejection of a Notice of Motion by the City Civil Court on 23/10/2020, restraining the MCGM from taking any action pursuant to the notice issued u/s.354 of the MMC Act on 16/11/2019.

Pertinent to note that the notice was based on a TAC report dated 11/11/2019, in respect of the suit premises i.e. shop

no. B-3, B-4 and B-5 situated on the ground floor of Khairunissa Manzil, P.J. Nehru Road, Vakola, Santacruz, Mumbai.

3 In the Notice of Motion, the plaintiff sought appointment of independent Structural Engineer to carry out the structural Audit Report of the suit premises.

4 Perusal of the impugned order would reveal that the learned Judge has referred to the TAC committee report which was conducted in respect of the suit building which is more than 55 years old and the Committee has declared it to be 'C-1' category. Recording that the decision of the TAC committee is binding on all the parties, the MCGM issued a notice u/s.354 of the MMC Act.

5 Worth to note that, most of the formalities for demolition of the suit building are completed since the defendant no.5 is proposing to redevelop the property under Regulation 33(7) of the DCR, which pertain to redevelopment of dilapidated and unsafe building.

6 Submission of the learned counsel for the applicant that his structure is a ground floor structure and pose no danger and he is ready to undertake the risk of any loss of life or property, in case of any untoward incident, is not an acceptable proposition.

The building has been assessed by the TAC Committee consisting of the structural audit and it has taken into consideration the report submitted by landlord as well as tenant

and after site inspection, the building is categorized as C-1 i.e. unsafe, dangerous, inhabitable structure which need to be vacated and demolished. Once such categorization is done, which is after due inspection and on consideration of the rival claims by the landlord and tenant, the notice issued by the Corporation cannot be doubted.

As far as the grievance of the plaintiff about execution of POA, or who is entitled to other entitlement, it can be taken care of independently. But for the present, since the building is declared as dangerous and deserve to be vacated and since a specific statement is made by learned counsel for respondent no.5 that barring the present appellant, all other structures are vacated, the appellant do not deserve protection even for a single day. Since the Notice of Motion was dismissed on 23/10/2020, but on his approaching this Court, the interim relief came to be granted in his favour, restraining the Corporation from demolishing the premises and this relief continued from time to time and is in force till today.

7 Considering the categorization of the premises as Dangerous, and in light of the guidelines issued by Municipal Corporation for declaring private and municipal building as dangerous/dilapidated and unsafe, it was incumbent upon the Corporation to issue a notice u/s.354, once a structure was declared to C-1 category and the notice, necessarily must indicate pulling down of the structure within a period of 7 days from the

issuance of the notice. Despite the said notice, the appellant has been granted a long rope and down the line, after rejection of the Notice of Motion in the year 2020, he still continue to clinch on to the said premises. The argument of the appellant that the structure is on the ground floor and let the Corporation demolish the other part of the building but shall not touch his structure, do not warrant any consideration, since it is not worthy of merit, as the entire building is declared as C-1 structure.

In the wake of the above, the Appeal is dismissed.

The Corporation is at liberty to give effect to the notice u/s.354.

8 Learned counsel for the appellant state that he has challenged the TAC report, the same itself being flawed one. In any case, as far as this argument is concerned, it will have to be established through the Suit which he has filed, seeking a declaration about the said report.

Another submission of the learned counsel for the appellant to the effect that the Corporation has failed to abide by its own guidelines, is also a matter of Suit and subject to the evidence being adduced, learned Judge shall appreciate the same.

In view of the dismissal of the Appeal, IA 3817/2020 does not survive and is disposed off.

(SMT. BHARATI DANGRE, J.)