

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Appeal from Order No. 201 / 2021
Alongwith
Interim Application No. 1932 / 2021
in
Appeal from Order No. 201 / 2021

Amita Jitendra Sachde

... Appellant

Versus

The Municipal Corporation of Greater Mumbai
and Others

... Respondents

Mr. M.V. Holamagi, Advocate for Appellant.

Mr. Ravindra Sirsikar, Advocate for the Respondent No.1 & 2.

Mr. Amogh Singh i/by Mr. P.D. Ghandy and Associates, Advocate for
Respondent No. 4 to 5.

CORAM : SANDEEP K. SHINDE, J.

DATE : 14th MARCH, 2022.

P.C.

Heard. Learned Counsel for the parties.

1. Appellant is a tenant in respect of Shop No. 1A in building known as 'Malik Niwas' at Ghatkopar, Mumbai-86. Arjun Kumar Malik is owner of the building. On 23rd May, 2018, Corporation

issued notice under Section 353-B of the Mumbai Municipal Corporation Act (MMC Act) to the owner and occupiers of building, Malik Niwas. Whereafter owner submitted structural audit report on 31st July, 2018, which categorized the building in C-1 category. As a report was based on only Proforma-B with only certain N.D.T test carried out. Therefore, Owner of the building was directed to carry out much more specific tests as required under prevailing Technical Advisory Committee (TAC) policy. After which, structural audit report alongwith tests reports, were submitted by Owner on 12th September, 2018. Thereafter, tenants submitted Structural Audit (S.A.) Report on 10th January, 2019, which categorized building in C2-B. Since both the structural audit reports were conflicting, as per prevailing policy, the matter was referred to TAC for decision. Whereafter TAC members visited the site and submitted the report to conclude that structure, known as Malik Niwas, was structurally deteriorated and in Dilapidated condition. Structure was categorized in C1 category. Whereafter on 15th February, 2021, notices were served on Landlords and Occupiers under Section 354 of the MMC Act. Notices is at Page No. 72 to 73. It shows the 16 tenants have

received and accepted the notice. Following that the Corporation convened meeting of the tenants on 15th June, 2021. After which, notice under Section 488 of the MMC Act was issued to Owner and Tenants of Malik Niwas. That notice is at Page No. 78 to 80. It refers, to 'area statement', of each tenants including that of Petitioner. Petitioner acknowledged the area statement on 25th June, 2021. It is only after acknowledging the area statement, the Appellant instituted the suit in the City Civil Court, seeking to;

- (i) declare, that 'Malik Niwas', building is strong and there is no danger to inhabitants of the building;
- (ii) appoint independent structural auditor to conduct the structural audit;
- (iii) appoint Court Commissioner to inspect the status of the building;
- (iv) restrain the Landlords & Corporation perpetually from dispossessing the Tenants from the building Malik Niwas.

. Pending suit, he moved Notice of Motion for temporary ad-interim relief. The ad-interim reliefs were in the nature; thus,

- (i) to appoint independent structural auditor;

(ii) appointment of the Court Commissioner and

(iii) restrain the Corporation and the Electricity supply Company from dispossessing and disconnecting the electricity supply to the suit shop. These reliefs were refused by order dated 12th July, 2021. This order is challenged in this appeal, under Order-43, Rule-1(r) read with Section 104 of the Code of Civil Procedure.

2. Primary evaluation of the material on record, in no uncertain terms imply that the building Malik Niwas is categorized in C1 category i.e. very dangerous and needs to be vacated immediately. It is in this circumstances, after the following due procedure contemplated in police, Corporation issued notice under Section 354 of the MMC Act. Whereafter the area statement has been drawn and thereby the Plaintiffs' right as a tenant has been acknowledged. Therefore, Corporation has followed due procedure before asking Petitioner to vacate the suit shop.

3. It may be stated that the Appellant has neither challenged structural audit report of TAC, nor the notice under Section 354. All the same, except the Plaintiff, other occupants/tenants have vacated

the premises. In that view of the matter, the interim order requires no interference. Appeal is dismissed.

4. At this time, Mr. Holamagi, learned Counsel for the Appellant submitted that the Plaintiff may be granted some time to vacate the Shop-1A. In consideration of the facts, the Plaintiff shall vacate the Shop No.1A on or before 5th April, 2022, at his costs. Yet he is directed to file an Undertaking to state that he is occupying Shop-1A at his own risk and cost AND shall vacate the Shop No. 1A on /or before 5th April 2022.

5. Appeal is dismissed alongwith Interim Application.

(SANDEEP K. SHINDE, J.)

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