

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FORM ORDER NO.772 OF 2022

Vijaykumar Angrish & Ors. ...Appellants
Vs.
The Municipal Corporation of
Gr. Mumbai & Ors, ... Respondents

WITH
APPEAL FROM ORDER NO.769 OF 2022

Capt. Jatinder Nath Kapoor ...Appellant
Vs.
The Municipal Corporation of
Gr. Mumbai & Ors, ... Respondents

Mr. Ghanshyam Upadhyay i/b Law Juris for the Appellant in AO No. 772/2022.

Mr. Abhishek Venkataraman a/w Burzin Somandy, Ms. Dishita Karnavat and Mithilesh Chalke i/b Tejaswita Nalawade for the Appellant in AO/769/2022.

Mr. Swapnil Bangur a/w Ms. Neha Mehta, Aditya Miskita and Ms. Aayushi Gohil i/b M.T. Miskita and Co. for Respondent No.3.

Mr. Om Suryavanshi for Respondent/MCGM.

Mr. Vishal Kanade i/b Ajay Basutkar for Respondent No.2.

CORAM : C.V. BHADANG, J.
DATE : 1 AUGUST 2022

:JUDGMENT:

. Taken up for final disposal by consent of parties.

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2. The challenge in both these appeals at the instance of the original plaintiffs, is to the order dated 16.07.2022 passed by the learned City Civil Court at Mumbai in Draft Notice of Motion in L.C. Suit No. 1576 of 2022. By the impugned order the learned City Civil Court at Dindoshi has refused to grant ad-interim injunction restraining the Respondent-Corporation (Defendant No.1) from enforcing the notice dated 01.07.2022 under Section 354 of the Mumbai Municipal Corporation Act, 1888 ('the said Act' for short). As such both these appeals are being disposed of by this common judgment.

3. The brief facts necessary for the disposal of the appeals may be stated thus:

4. The Respondent, Shree Trimurthi Co-operative Society Limited (Defendant No.2) is having a residential building comprising of total 17 flats/tenements situated at Khar (West) Mumbai. The Appellants/plaintiffs are the members of the said society, while the Respondent No.3-Evereshine Builders Private Limited is the developer. The Respondent society has given redevelopment rights of the suit building to Respondent No.3-Developer in respect of which there is a dispute amongst the members of the society.

5. It may be mentioned that the Respondent-builder has filed Suit (Lodging) No. 2760 of 2020 before this Court *inter alia* for a declaration that Defendant Nos. 1 to 6 therein are bound by terms and covenants of the development agreement and have no right to oppose the redevelopment and/or to refuse to vacate their respective individual flats. The Respondent-developer in the said suit has sought consequential relief of a direction to the private Respondents (members of the society) to vacate their respective flats. That suit is pending on the original side of this Court.

6. In the meantime, the Respondent-Corporation has issued a notice dated 01.07.2022 under Section 354 of the said Act alleging that the suit building is classified as falling under C-1 category and requires to be vacated in order to carryout demolition as the subject structure is dangerous for inhabitants and others.

7. The case made out by the Appellants in the plaint is that the building is not in a dilapidated condition and can be repaired. The Appellants had engaged M/s. DARV Engineers and Consultants Pvt. Ltd., Structural Auditors for carrying out the structural audit of the said building and as per the report submitted by the said structural auditors in October 2020, the building is classified as falling under C-2B category. The said report was sent to the Respondent-Corporation in November

2020. However, the Respondent-Corporation without conducting any independent structural audit or referring the matter to the Technical Advisory Committee ('TAC' for short), had issued the impugned notice dated 01.07.2022.

8. After the receipt of the notice, the plaintiffs approached their structural auditor, who by the letter dated 07.07.2020 has informed that the findings in a report of October 2020 are still valid. According to the Appellants, the impugned notice was issued only on the basis of the report of the structural auditor of the society and in view of the fact that there were two contrary structural audit reports, the Respondent-Corporation ought to have referred the matter to TAC before issuing notice.

9. The Appellants filed a Notice of Motion seeking protection from execution of the impugned notice, requiring the Appellants to vacate the suit premises for the purposes of demolition.

10. It was contended on behalf of the Respondent-Society as well as the developer that as per the report submitted by M/s. Tech Restrength Consulting Civil Engineers engaged by the Society, the building is categorised as C-1 structure and therefore, it requires to be vacated for the purpose of demolition.

11. It was contended that the report of the structural auditor engaged by the Appellants was submitted in October 2020 with a validity of one year and as such the same was not valid in the year 2022 when the impugned notice was issued. It was contended that the Appellants without obtaining any fresh structural audit report, have filed suit resisting the impugned notice. It is submitted that mere issuance of the letter dated 07.07.2022 without conducting any inspection of the building, ratifying the report of October 2020, is not sufficient.

12. It was also contended that the plaintiffs being the minority members, do not have any *locus standi* or legal right to oppose redevelopment.

13. The learned City Civil Court after noticing that there are two contrary structural audit reports on record has found that the structural audit conducted by M/s. DARV Engineers and Consultants Pvt. Ltd. engaged by the Appellants had not conducted the necessary and required tests and hence, the same cannot supersede the recent audit report submitted by the Respondent-society. The learned City Civil Court also noticed that audit report of the structural auditors engaged by the Appellants was valid for 1 year and thus, was not valid in the year 2022. In that view of the matter by the impugned order dated 16.07.2022, ad-interim relief has been rejected.

14. I have heard learned counsel for the parties. Perused record.

15. It is submitted by the learned counsel for the Appellants that the impugned notice is issued by the Corporation in collusion with the society and the developer. It is submitted that there is a genuine dispute about the redevelopment agreement, which is pending before this court and in order to circumvent the same, the present notice came to be issued in collusion with the Corporation. It is submitted that there is a report of the structural auditors engaged by the Appellants of October 2020 classifying the building as C-2B which would not require building to be vacated and can be repaired. It is submitted that as per the applicable guidelines, the matter ought to have been referred to TAC. It is also submitted that the Trial Court has not considered the effect of Section 353B of the said Act, although a specific ground to that effect is raised in the plaint.

16. The learned counsel for the Respondent submitted that the report of October 2020 could not hold field in the year 2022 as it was valid only for one year and mere issuance of letter dated 07.07.2022 ratifying the said report would not be sufficient. It is submitted that thus, the Corporation was not faced with any contrary reports at the time, when the impugned notice, was issued on 01.07.2022 when there was only one report of M/s.

Tech Restrength Consulting Civil Engineers, engaged by the Respondent-Society categorising the building as C-1 category. The learned counsel pointed out that it has come on the record that in the interregnum two balconies of flat had collapsed which would indicate that the structure was in a dilapidated condition. It is submitted that Section 353B is an independent/stand alone provision, which cannot be read into or along with Section 354 of the said Act.

17. I have considered the submissions made. In this case, interim relief was granted on 28.07.2022 & 29.07.2022 subject to the Appellants furnishing usual undertaking which has been furnished.

18. As noticed earlier, the dispute amongst the members of the Respondent society, who are plaintiffs/Appellants regarding the validity of the redevelopment agreement is pending before this Court in Suit (L) No. 2760 of 2020 filed by the builder. Thus, it is neither necessary, nor appropriate to go into the dispute pertaining to the redevelopment agreement. The issue in the present case, is confined to notice issued by the Corporation under Section 354 of the said Act. It is further necessary to note that as of now, the City Civil Court has only refused to grant ad-interim protection and the Notice of Motion is still pending. There is a structural audit report conducted by the Appellants not

too long ago i.e. in October 2020, which classified the building as C-2B category, not requiring it to be vacated/demolished. On the contrary, there is a report submitted by the Respondent Society of M/s. Tech Restrength Consulting Civil Engineers classifying the structure as C-1 category, on the basis of which the impugned notice has been issued. In my considered view, there are arguable points involved about the effect/validity of the report of October 2020 as also about the requirement of the matter being referred to the TAC in view of the applicable guidelines. There is also an issue whether the impugned notice could have been issued on the basis of the report submitted by the society alone without any independent assessment by the Corporation. It is made clear that I am only indicating the rival contentions which need to be considered by the Trial Court while deciding the Notice of Motion. It transpired during the course of the hearing that out of the 17 occupants/tenement holders about 5 to 6 occupants have already vacated and the Appellants have furnished undertakings that they are staying at their own risk. Having regard to the over all circumstances, I find it appropriate that the hearing of the Notice of Motion is expedited while continuing the interim relief granted in favour of the Appellants.

19. In the result, the appeals are disposed of directing the learned City Civil Court at Dindoshi to hear and decide the

Notice of Motion as expeditiously as possible and preferably within a period of 12 weeks from the receipt hereof.

The rival contentions of the parties on merits are left open.

20. The interim protection granted by this Court on 28.07.2022 and 29.07.2022 shall continue to operate during the pendency of Notice of Motion subject to usual undertaking being furnished before the learned City Civil Court within one week from today.

In the circumstances, there shall be no order as to costs.

C.V. BHADANG, J.