

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 782 OF 2022
WITH
INTERIM APPLICATION NO. 17028 OF 2022

Mrs. Laxmi Datta and Ors.

..Appellants

V/s.

Mumbai Corporation of Greater
Mumbai and Ors.

..Respondents

Ms. Swati Parag Gautam a/w Roma Bhende for the Appellant.

Mr. R. Y. Sirsikar for the Respondent/MCGM.

CORAM : C.V. BHADANG, J.

DATE : 5 AUGUST 2022

P.C.

. The challenge in this appeal is to the order dated 30.07.2022 passed by the City Civil Court at Mumbai in draft Notice of Motion in L.C. Suit No. 1718 of 2022. By the impugned order, the learned City Civil Court has refused to grant ad-interim injunction restraining the Respondent Corporation from acting on the notice/order dated 22.07.2022 under Section 354 of the Mumbai Municipal Corporation Act, 1888 ('the said Act' for short). According to the Respondent/Corporation, the subject structure is in dilapidated and dangerous condition and is required to be pulled down. Consequent upon the issuance of the said notice, the concerned authorities have also disconnected

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the electricity and water supply of the building. The Appellants/ Plaintiffs are also seeking restoration of the essential supplies.

2. I have heard the learned counsel for the Appellants and the learned counsel for the Respondent-Corporation. With the assistance of the learned counsel for the parties, I have gone through the record.

3. The learned counsel for the Appellants submitted that there is a structural audit report carried out by Mr. Parikshit Malodkar engaged by the Appellants and on 03.05.2022 Mr. Parikshit Malodkar had filed the structural audit report which categorises the building as belonging to C2-B category. She therefore, submitted that the building needs only structural repairs, without eviction of the tenants. It is submitted that inspite of this, the Corporation has issued a notice under Section 354 of the said Act.

4. It is submitted that the learned City Civil Court was not justified in refusing to grant ad-interim relief restraining the Respondent Corporation from demolishing the subject structure and ought to have directed the restoration of the electricity and water supply to the building. It is submitted that an operative part of the order was pronounced on 30.07.2022 and the reasons were supplied subsequently. A copy of the reasoned order is today produced on record.

5. On behalf of the Appellants, reliance is placed on the decision of this Court in *Rufina D'Souza and Ors. v/s. Municipal Corporation of Greater Mumbai and Ors.* in Writ Petition No. 191 of 2017 decided on 07.08.2022 in order to submit that after the report of the Technical Advisory Committee (TAC), no fresh notice under Section 354 of the said Act has been issued by the Corporation.

6. The learned counsel for the Respondent Corporation states that as per the applicable guidelines in view of the conflicting structural audit reports, the matter was referred to TAC and the TAC by its report dated 30.05.2022 has classified the structure as C-1 category which is required to be evacuated and demolished immediately. He submits that thus no exception can be taken to refusal of the ad-interim relief.

7. I have carefully considered the rival circumstances and the submissions made.

8. In this case, there was a report dated 10.10.2016 furnished by the Respondent No.3 Developer which categorised the suit building as belonging to C-1 category. The Respondent Corporation required the Appellants to file their objections to the structural audit report. The appellants furnished report of Parikshit Malodkar dated 03.05.2022 which categorised the

building as C2-B. This was followed by the issuance of the notice under Section 354 of the said Act. However, subsequent to that as per the applicable guidelines, the matter is referred to TAC somewhere in June, 2022. The record also discloses that the representatives of TAC had visited and inspected the premises on 06.06.2022 and thereafter, TAC as per the report dated 30.05.2022 has categorised the building as belonging to C-1 category. Incidentally, I have also seen the photographs of the building which were produced across the bar and some of which are part of the appeal compilation.

9. Perusal of the report of TAC that the TAC after considering the rival structural audit reports and photographs etc. has categorised the building as belonging to C-1 category. In the absence of any circumstances to show that the findings are *dehors* the material on record, this Court cannot go into the technical aspect about the condition and the status of the building. In normal course this aspect has to be left for determination by the experts/expert body in the field, which in the present case, is the TAC.

10. The reliance placed on the decision of this court in *Rufina D'Souza* (supra) to my mind is misplaced. The perusal of the judgment shows that said Judgment is based on a concession made on behalf of the Respondent-Corporation that the matter can be referred to TAC. It can thus be seen that the issue about

the condition of building was not even referred to TAC in that case. In these circumstances, it is observed that after the matter is referred to TAC, the Corporation will have to issue notice depending upon the decision of the TAC. It can thus be seen that the said decision clearly turned on its own facts. No decision has been pointed out, holding that a fresh notice under Section 354 of the said Act has to be issued after the matter is decided by the TAC. Thus, no case for interference is made out.

11. The appeal is accordingly dismissed, with no order as to costs.

C.V. BHADANG, J.