

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

***APPEAL FROM ORDER NO.378 OF 2021
WITH
INTERIM APPLICATION NO.3152 OF 2021***

Rajesh M. Jain and Ors. ...Appellants
Vs
The Municipal Corporation of Gr.
Mumbai and Ors. ... Respondents
...

Mr. Arif Anwar i/by Bhati Associates for the Appellants.

Mr. Ravindra Sirsikar for the MCGM.

Mr. S.J.Singh i/by Mr. S.R.Upadhyay for Respondent No.3.

***CORAM : SANDEEP K. SHINDE J.
DATE : FEBRUARY 9, 2022.
(Through Video Conferencing)***

P.C. :

Heard learned counsel for the parties.

2 Appellants/plaintiffs instituted the suit, in the City Civil Court at Bombay, questioning the legality of the notice dated 25th April, 2015 issued by the Municipal Corporation of Greater Bombay under Section 354 of the Mumbai Municipal Corporation Act, 1881 and report of the Technical Advisory Committee (TAC) dated 16th

July, 2015 in respect of building known as ‘Mohanlal Mansion’ (‘Building’ for short), situated at Malad (West), Mumbai, 400 064.

3 Appellants/Plaintiffs are the tenants occupying tenements in ‘A’ Wing of the said Building of which, Mr. Bharat Mohanlal Soni is the landlord/owner. On 9th April, 2014, the Municipal Corporation of Greater Bombay issued notice under Section 353(B) of the MMC Act to the owner and occupiers of the building, to carry out structural audit report with Non Destructive Testing. Notice was allegedly replied only by tenants in wing “B” of the building, along with, report of structural auditors, M/s. N.M.Consultants, who had classified the building ‘C-2B’ category. Whereas structural auditors of the landlord, classified the said building in ‘C-1’ category.

4 It is appellants’ case that being occupants of wing ‘A’ of the building, they were not served with notice under Section 353(B) of MMC Act and therefore, they could not submit Structural Audit Report in respect of wing ‘A’ of the building. Next contention is that, plaintiffs were not heard by the ‘TAC’ Committee, before

classifying the building in 'C-1' category.

5 Be that as it may, since two structural audit reports were submitted; one by owner Mr. Bharat Mohanlal Soni and another by tenants of the building, being contradictory, matter was referred to TAC for technical remarks and guidance. The TAC committee after examining technical aspects concluded that all the relevant test reports were below average results and building falls under 'C-1' category requiring immediate evacuation and demolition. Conclusions recorded by the TAC committee is re-produced below;

“ **TAC CONCLUSION:-**

Ward staff opined that on inspection, the building is found to be in dangerous condition and repairs to the structure is done cosmetically. Test results are very poor.

All the relevant test reports shows below average results and the building falls under C-1 category. Full vegetation growth is seen and also no proper periodic maintenance of the structure is done.

Considering the above reports placed on record by the Consultants, TAC opined that the building under reference needs to be vacated immediately and demolished under the supervision of Structural consultant, as the same is not fit for human habitation.

Meanwhile, till such time, the ward staff shall

direct Owner/occupants to take preventive measures such as propping etc. to avoid any mishap till evacuation.”

6 The appellants/plaintiffs’ contention that they were neither served with notice under Section 354B nor were heard by the TAC Committee is concerned, the learned trial Court in Paragraphs 10 and 12 of its order has elaborately dealt with it. These paragraphs conclude, that the TAC report dated 17th July, 2015 was served on the concerned parties; the notice was affixed on conspicuous place of the building and notice under Section 353(B) of the Act was received and acknowledged by plaintiff no.14, relative of plaintiff no.21 and father of the plaintiff no.15. I have no reason to discard these observations/conclusions. As a result, the contention of plaintiffs that they were not served with the notices or report of TAC, requires no consideration and it is rejected. All things considered, Corporation, has followed due procedure, before declaring the building ‘Mohanlal Mansion’ in category “C-1”.

7 For all that reasons, no interference is called for in the impugned order. Appeal From Order is dismissed.

8 After dictating the order, Mr. Arif Anwar, the learned counsel for appellants, submitted that appellants be granted two months' time to vacate their respective tenements and shall file Undertaking within two weeks from today.

9 Let, the appellants/plaintiffs, file Undertaking on or before 24th February, 2022.

10 List the appeal on 25th February, 2022 to verify the compliance of Undertaking. Appellants/plaintiffs shall forward copy of the Undertaking to Mr. Sirsikar, learned counsel for the Corporation before 25th February, 2022.

11 Appeal is dismissed and disposed of in aforesaid terms.

12 As the appeal itself is dismissed, nothing survives in the interim application therein and same is also disposed of.

(SANDEEP K. SHINDE, J.)