

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (L) NO.2956 OF 2022
IN
WRIT PETITION (L) NO. 1748 OF 2021

...

Batukbhai Gokaldas Morjaria ...Applicant

In the matter between:

Batukbhai Gokaldas Morjaria and Ors. ...Petitioners

Versus

The Municipal Corporation of Gr. Mumbai & Ors. ...Respondents

WITH
INTERIM APPLICATION NO. 231 OF 2021
IN
WRIT PETITION (L) NO. 1748 OF 2021
(NOT ON BOARD. TAKEN ON BOARD.)

Rekha Mahesh Kothari ...Applicant

Versus

Batukbhai Gokaldas Morjaria and Ors. ...Respondents

Mr.Jitendra G.Damani a/w Adv.Manasi C.Pandit for the Applicant in IAL/2956/2022.

Ms.Madhuri More for BMC.

Dr. Abhinav Chandrachud with Mr. Laxmi Narayan Shukla and Mr.Uttam S. Rane i/b M/s Legal Vision for Applicant/Intervenor in IA No.231/2021.

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**CORAM : A.A. SAYED &
ABHAY AHUJA, JJ.**

**DATED : 3 FEBRUARY 2022
(THROUGH V.C.)**

P.C.:**I. INTERIM APPLICATION (L) NO.2956 OF 2022**

Initially notice under section 354 of the Mumbai Municipal Corporation Act for demolition of the subject building was served in the year 2016. Pursuant to an order dated 11-11-2020 passed in Writ Petition (L) No.6076 of 2020 filed by the Petitioners, the matter was referred to the Technical Advisory Committee (TAC). The TAC has taken a decision on 29-12-2020. The observation and conclusion of the TAC are as follows:

"T.A.C. Observation:

The site has been inspected on 16-12-2020 at 11.30 a.m. by T.A.C. Members along with R/Central Ward Staff. T.A.C. Members have inspected the structure from externally and internally. The structural members in individual units in the building at each floor along with terrace/roof are inspected. During the site inspection, it was observed that the building is in deteriorated and dangerous condition. Vertical cracks to the columns are observed. The building is in precarious condition. The observations of site visit and actual site condition of the building were discussed in the meeting in detail. All the T.A.C. Members have again carefully gone through the structural audit reports submitted by both Structural Consultants. Test results submitted by all the Structural Consultants were carefully perused and had discussion on their recommendations and conclusions.

CONCLUSION

In view of the statements & records of all the Structural Engineers, having gone through the details & opinion given by the Committee

Members and considering the overall status of the building, the Committee is of the opinion that the report submitted by Shri Yogesh Patel, Consulting Engineer (STR/P/127) classifying the structure in “C-1” category i.e. “To be evacuated and demolished immediately” shall be accepted.

Immediate actions are necessary from the Occupants/Owner to vacate & prop the building as per the details to be submitted by registered Structural Engineer. Failure to prop the building should lead to further course of legal action from Designated Officer, R/Central Ward, Designated Officer, R/Central Ward should pursue the legal action and shall not stall unless there is order of Competent Authority of Competent Court.

The decision shall be communicated as per practice by Member Secretary. Further course of action, if any, with due process and as per policy in force and the standard guidelines of Hon’ble High Court shall be followed by Executive Engineer & Designated Officer (Building & Factory), R/Central Ward.”

2. The expert body viz.TAC has observed that there are vertical cracks and the building is in danger and precarious condition and categorized the building as “C-1”. There is a dispute in relation to ownership of the subject building and in respect of which there is a suit pending in the City Civil Court. In view thereof, we do not think there is any likelihood of redevelopment taking place in near future which would have persuaded the Court to grant limited protection only to enable the landlords and tenants/occupants to sit together and work out the terms of redevelopment. The Court would be extremely slow in granting protection when there is a risk of life to the occupants/tenants and passers-by in the event of any

mishap. Even if demolition is carried out, the rights of the occupants/tenants are not extinguished. Hence, we are not inclined to grant any ad-interim relief.

3. List the Petition on 24 March 2022.

II. INTERIM APPLICATION NO. 231 OF 2021

The Interim Application for intervention is filed by the Applicant, who also claims to be the owner of the subject building. The Petitioner Nos. 1 to 3, on the other hand, also claim to be owners of the said building. Admittedly, there is a suit pending in the City Civil Court between the Petitioner Nos.1 to 3 and the Applicant in respect of ownership of the subject building

2. In the circumstances, we allow the Interim Application. The Petitioners to implead the Applicant/Intervenor as party-Respondent in the Writ Petition, without prejudice to their rights and contentions. Amendment to be carried out within two weeks. Amended copy of the Petition be served upon the Advocate for the Respondents.

3. The Interim Application to stand disposed of.

III. After we passed the above order declining to grant any protection to the Petitioners, learned Counsel for the Petitioners stated that it is very unfair that such order is being passed. Even after cautioning and pointing out that if the Petitioners are aggrieved by the order they have a remedy of challenging the said order before the Apex Court, learned Counsel for the

Petitioners kept repeating that it is a very unfair order passed by the Court. The learned Counsel should be aware that there is a process to be followed by the Respondent – Corporation before it can demolish a building and the Petitioners would have sufficient time to approach the Apex Court to challenge this order.

2. Ordinarily, one of the parties would always be aggrieved by the grant or refusal to grant ad-interim/interim relief. It would be difficult for the Court to function if adverse comments are made on the orders after orders are passed by Court in the matters. It is expected of the Advocate / Counsel not to identify with their clients and exercise restraint if the order is not favourable to the parties they represent. We hope and trust that, in future, the learned Counsel for the Petitioners would adhere to the traditions and conventions of the Court and exercise restraint and not comment on orders after the orders are passed by the Court even if, according to him, the orders are erroneous or unfair.

(ABHAY AHUJA,J.)

(A.A.SAYED, J.)