

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

Amk

WRIT PETITION NO. 118 OF 2022

Satish G. Korgaonkar & Ors.

.. Petitioners

Vs.

Mumbai Municipal Corporation & Ors.

.. Respondents

Mr. M. M. Vashi, Senior Advocate i/b M/s. M. P. Vashi & Associates for the Petitioners.

Ms. Madhuri More for the Respondents-BMC.

Mr. Nitesh Bhutekar for Respondent No.4-Society.

CORAM : **A. A. SAYED &**
ABHAY AHUJA, JJ.
DATE : **28th FEBRUARY, 2022.**

P. C. :

1. The Petitioners are seeking relief in terms of prayer Clause (a) of the Petition. Prayer Clause (a) reads thus:

a. That a writ of mandamus or any other writ, order or direction be issued ordering and directing the respondent No. 1 and 2 to

i. Disconnect the electricity and water supply to the building of the respondent No.4 society, and

ii. Demolish the society building.

2. The Petitioner Nos.1 and 2 are members of Respondent No.4-Society. Petitioner No.3 is the Developer with whom Respondent No.4-Society has entered into an Agreement for Development of the Society-Building. The Respondent-Corporation has issued a notice under Section 354 of the Mumbai Municipal Corporation Act dated 23.01.2021 to the occupants of the building as well as the Petitioner No.3-Developer, to vacate the premises and pull down the building on the ground that the building is in a dangerous condition and likely to fall. Respondent No.3 is stated to be the only member of the Respondent No.4-Society who has not

vacated the subject building. It is pointed out by learned Senior Counsel for the Petitioners that Respondent No.3 holds Flat No.18 in the Society Building and is presently temporarily occupying Flat No.10 in the Building.

3. On 01.12.2021, this Court passed the following order:

“By consent of learned Counsel for the Petitioner and learned Counsel for Respondent No.3 (who is now the only occupant of the subject building) and inasmuch as there are contrary reports as regards the condition of the subject building, by consent, we refer the matter to the concerned Technical Advisory Committee (TAC) of the Respondent-Corporation. The Petitioners as well as Respondent No.3 shall appear before the TAC on 8th December 2021 at 11.00 a.m. along with an authenticated copy of this order and appropriate directions may be issued by TAC.

2. Let the decision of the TAC be placed before this Court on the next date.

3. List the Petition on 10th January 2022.

4. The Respondent No.3 may file Affidavit-in-Reply by 22nd December 2021. Rejoinder, if any, be filed before the next date.”

4. On 16.02.2022 the following order was passed:

“We have perused the order dated 1st December, 2021. Learned Counsel for the Respondent No. 3 on instructions states that the Respondent No. 3 is not ready to pay the 50% fees as required by the Technical Advisory Committee (TAC). We are also informed that the parties could not arrive at a settlement.

2. On the request of learned Counsel for the Petitioners, we defer the matter.

3. Stand over to 23rd February, 2022 (HOB)."

5. Thus, Respondent No.3 is not ready to pay 50% of the amount which comes to Rs.2,06,500/- as demanded by way of fees of TAC. Consequently, the Technical Advisory Committee (TAC) has not been able to proceed further.

6. Be that as it may, since the building has been categorized as C-1 and the building is in dilapidated and dangerous condition and all the other occupants of the building have already vacated their premises in the building and to whom the Petitioner No.3-Developer is paying transit rent, the Respondent No.3 cannot be allowed to obstruct the demolition of the building and stall the redevelopment of the building. Once the building is categorized as C-1, the building is required to be demolished. The apprehension of the Respondent No.3 as regards redevelopment of the building cannot be gone into considering the limited scope of the Petition.

7. In the circumstances, the Petition deserves to be allowed and accordingly allowed. Hence, we pass the following order:

ORDER

- (i) The Respondent-Corporation shall now act upon the notice dated 28.06.2019 by fixing a fresh date and take steps to disconnect the electricity supply within one week from today. The Respondent-Corporation shall act upon the Notice of demolition u/s. 354 of the Mumbai Municipal Corporation Act, 1888 at the earliest by taking police assistance, if necessary.
- (ii) We make it clear the rights of the Respondent No.3 would be protected under section 354(5) of the Mumbai Municipal Corporation Act, 1888.
- (iii) We direct the Petitioner No.3-Developer to pay transit rent to the Respondent No. 3 at par with the other occupants of the building upon his vacating the premises occupied by him in

the building.

(iv) We record the statement of the learned Senior Counsel of the Petitioners that the Petitioner No.3-Developer would endeavor to complete the construction of the new building within a period of 30 months from the date of obtaining the Commencement Certificate.

(v) The Petitioner No.3-Developer would be entitled to refund of the amount of TAC fees in accordance with law.

8. The Petition is allowed in the aforesaid terms.

[ABHAY AHUJA, J.]

[A. A. SAYED, J.]