

Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 1885 OF 2021
IN
WRIT PETITION NO. 2737 OF 2018

Municipal Corporation of Greater Mumbai ...Applicant/Original
Respondent No 2

In the matter between

Mohan Yeshwant Padawe & Ors ...Applicants

Versus

The State of Maharashtra through Ministry ...Respondents
of Housing and Urban Development and
Ors

Mr Anoop Patil, with Sagar Patil i/b Arauna Savla, for the Applicant.
Mr Anand Mishra, i/b AM Saraogi, for Original Petitioner.
Mr Abhay Patki, AGP, for MCGM.

CORAM G.S. Patel &
Gauri Godse, JJ.

DATED: 29th September 2022

PC:-

1. This is an Interim Application by the Municipal Corporation of Greater Mumbai (“MCGM”) seeking that an order of 25th May 2018 passed by a Division Bench of this Court (SJ Kathawalla & AS Gadkari JJ) be vacated.

2. That order was passed when the Bench was sitting as a vacation Court. A copy is at Exhibit “A” to the Interim Application at pages 38 and 39. We reproduce the order in its entirety.

- “1. Not on board. Upon mentioning, taken on board.
2. The learned Advocate appearing for Respondent Nos. 2 and 3 on instructions states that Respondent Nos. 2 and 3 shall within a period of 24 hours reconnect the water as well as electricity supply, which they have disconnected.
3. The learned Advocate appearing for the Petitioners on instructions states that the Petitioners shall reside in the premises bearing CTS No.13, Final Plot No. 1274, Town Planning Scheme No. 4, Mahim, G/South Ward, Mahim, Mumbai – 400 016 (the Suit property) at their own risk. They shall be responsible for the consequences if any in view of the present dilapidated condition of the building as alleged by the Corporation.
4. The learned Advocate appearing for the Petitioners on instructing states that the Petitioners will file their undertaking to the above effect on or before 28th March, 2018.
5. Stand over to 18th June, 2018.”

3. The MCGM is Respondent No 2 to the original Writ Petition. The four Petitioners are tenants of a structure that was called Janki Bhavan. This stood as City Survey No 13 Final Plot No 1274, TPS-IV, Mahim, Mumbai 400 016. The other tenants are joined as Respondents to the Petition. Unlike the usual Petitions, the present structure is not one of the old structures, that is to say, it is not the original structure that has, overtime, deteriorated. It is a relatively recent structure of 2009 or so. This was constructed by the 4th Respondent developer (Sanghavi Grih Nirman Pvt Ltd) purely as a

temporary transit accommodation for the tenants. Respondent No 4 is also the owner of the property. It proposed re-development and that tenants consented. Part of that re-development of the previous tenanted cessed structure required that the old structure be pulled out, and a transit structure be erected in its place until such time has the tenants' permanent alternate accommodation building was ready. In the meantime, the tenants were to be accommodated in the present structure in question. This is not a permanent structure. It is a temporary, steel-frame structure. It was constructed, designed and has been used only as temporary alternate accommodation.

4. The tenants filed the Writ Petition and sought intervention of this Court in exercise of its jurisdiction under Article 226 of the Constitution of India because the MCGM had issued notices under Section 354 of the Mumbai Municipal Corporation Act 1888 (“MMC”) saying that this temporary transit accommodation structure was itself now dilapidated and dangerous. There are reports of structural audits. There are also reports and opinions of the Technical Advisory Committee, a body that was first set up under directions of this Court in an earlier Writ Petition in 2014. That scheme has now been incorporated by the MCGM by a notification or by appropriate regulations. One of the grievances was that the tenants were being asked to vacate without any provision being made for their permanent alternate accommodation, to which they are entitled in law.

5. It was this case that was before the Division Bench during the Court vacation of the summer of 2018. On its own, the order the

Division Bench made that day does not prevent the MCGM from exercising its powers under the MMC Act, but all have read and understood it, as we ourselves do even today, to be a conditional order of status quo at least to the extent of eviction of the tenants from the structure. Therefore, directions were passed for the restoration of electricity and water supply. There are altogether about 42 tenants. All are in occupation. This continued occupancy (of tenements in the temporary transit structure) is obviously subject to the conditionality imposed by the Court, namely, that should any of these tenants desire to continue in these premises, they do so at their own risk. They are also responsible, in the words of the Division Bench, “for the consequences if any in view of the present dilapidated condition of building as alleged by the Corporation.”

6. Nobody asked for this order to be vacated until 2021. We should have imagined that it was developer/owner, if at all it was serious about the project, which would have come forward.

7. Instead, to our very great surprise, we find that it is the MCGM that files this Interim Application for the following reliefs:

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- “a. Filing of Affidavit may kindly be dispensed with;
- b. The Interim Application may kindly be allowed;
- c. This Hon’ble Court be pleased to vacate the order dt. 25.05.2018 passed in the above Writ Petition in respect of suit building “Janki Bhuvan” and consequently grant leave to the Applicants permitting them to forthwith take all necessary steps to evict the tenants/occupants of suit

building and demolish the said dilapidated structure/building, in accordance with law, with aid of the police force, if required;

d. Pending hearing and final disposal of this Interim Application, the Hon'ble Court may be pleased to appreciate the abovementioned facts and direct the Petitioners / Respondents No 1 to 4 herein and all other occupants / tenants residing in suit building, to forthwith vacate by themselves in time bound manner not beyond 7 days, the respective structures occupied by them in the Suit Building and handover vacant and peaceful possession of the same to the Applicants to take further action as per law;

e. Pending hearing, and final disposal of this Interim Application, the Hon'ble Court may be pleased to appreciate the abovementioned facts and direct the Petitioner/Respondents and all other occupants/tenants residing in suit building, not to obstruct or create hindrance in any manner to proposed action of eviction and demolition of suit building.”

8. We are entirely unable to understand how the MCGM is in any way affected or prejudiced by the previous Division Bench order. It may be that the building has been declared dilapidated. But that is a controversy yet to be resolved. The occupants/tenants have been permitted to continue to reside there at their own risk.

9. The MCGM does not tell us where these tenants are supposed to go if reliefs are granted. Presumably, they are to be thrown on to the streets of the city and left to fend for themselves. The MCGM has sufficient power and authority to take action against the 4th Respondent developer and to compel it to complete

the project for which it got sanction. There is no indication in the Interim Application that the MCGM has done anything in that direction.

10. This is of some significance because the benefit of an order in this Interim Application is not to the tenants, who would clearly be prejudiced. It is not to any perceptible advantage of the MCGM, because the MCGM is itself is not prejudiced. It is solely and entirely to the benefit of the developer. But that developer has remedies available to him in law, both under the Rent Act as also in Municipal Law.

11. One cannot escape the feeling that this Interim Application by the MCGM is at the instance of the developer, to somehow or the other get vacant possession of the property without making provision for permanent alternate accommodation for the tenants. If this Interim Application is allowed, the only result is that the tenants are thrown out, the temporary transit accommodation is demolished and the developer/owner gets a bonanza of getting a completely emptied plot.

12. It is in this context that we find it significant that despite service, Respondent No 4, the developer, does not appear in this Interim Application. It does not tell us what steps it is taking to complete the project. It is not here to inform the Court when the permanent alternate accommodation building will be ready and when these tenants can be shifted from their temporary accommodation to the permanent one. Instead, we are simply asked

to evict these tenants from the temporary accommodation that was given to them as part of a sanctioned re-development project. We are asked to believe that it is perfectly equitable to do so. We are also asked to believe that justice demands that 42 tenants be forcibly thrown out of their homes, and transit homes at that, onto the streets, there to fend for themselves as best they can. These tenants have already been moved out of their original tenanted tenements and shifted to this temporary transit structure. Now the MCGM, supposed to protect and safeguard the interests of people just like them, says they should be evicted from even this temporary accommodation. “And go where?” we asked. We received no answer.

13. Mr Patil for the MCGM tells us again and again that the building is dilapidated. Many buildings are. We are yet to see this level of enthusiasm in litigation from the MCGM in regard to other buildings that are perhaps even older and certainly far more dilapidated.

14. Then we are told that the order in question is inadequate. “What will happen to visitors and guests who might be affected should there be a collapse ?” is the submission. “The Division Bench order does not say.” This is a patent misreading of the order in question. It clearly says in paragraph 3 that the tenants shall be ‘responsible for the consequences, if any’. Every consequence does not have to be anticipated, contemplated, and spelt out. All consequences — without limitation — are the responsibility of the tenants/occupiers. That is the basis on which they are allowed to

continue in occupation with their power and water supply restored. That much is plain and is self-evident from a wording of this order — at least to us, if not the MCGM,

15. In these circumstances, we are firmly of the opinion that this Interim Application by the MCGM is utterly without merit and possibly worse. Since there is no officer present who can be identified as a person who gave instructions to file this thoroughly misconceived and possibly mischievous Interim Application, we refrain from imposing costs. We have put the MCGM to notice that it would be in the fitness of things if it put some distance between itself and developer/builders.

16. The Interim Application is dismissed.

(Gauri Godse, J)

(G. S. Patel, J)