

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

WRIT PETITION NO. 2575 OF 2023

1. Rajeevan T. V.,
Age-54 years, Occupation-Business,
Residing at-H-67, 0-1, Sunrise CHS,
Palm Beach Road, Sector-4, Nerul,
Navi Mumbai, Taluka and District-Thane,
State-Maharashtra, Country-India,
Pin Code-400 706.
2. Keshavji Babu Rawat,
Age-47 years, Occupation-Business,
Residing at- Plot No. 196, House No.1,
Sector-16 A, Nerul, Near Sea Bridge Tower,
Nerul, Navi Mumbai, Taluka and District-Thane,
State-Maharashtra, Country-India,
Pin Code-400 706.
3. Gulabi Mudda Shetty,
Age-76 years, Occupation-Business,
Residing at-Anandvan CHS, F-49,
3-2, Near Palm Beach Road, Sector-4,
Nerul, Navi Mumbai, Taluka and District-Thane,
State-Maharashtra, Country-India,
Pin Code-400 706.
4. Ramani Narayan Shetty,
Age-82 years, Occupation-Business,
Residing at-Behind Adarsh Vidyalaya,
Room No.50, Adarsh Nagar, Sahakar Nagar,
Road No.4, Shell Colony, Chembur, Mumbai,

State-Maharashtra, Country-India,
Pin Code-400 071.

5. Hemraj Sukanraj Jain,
Age-62 years, Occupation-Business,
Residing at-Vaishnav Devi Nivas CHS,
Plot No.385/386, Room No.204, Palm Beach Road,
Sector-6, Nerul, Navi Mumbai, Taluka and District-
Thane, State-Maharashtra, Country-India,
Pin Code-400 071.
6. Vijay Singh Chandallya,
Age-40 years, Occupation-Business,
Residing at-Flat No.702, Plot No.64/65, 7th Floor,
Mayuresh Tricity CHS, Navi Mumbai,
Taluka and District-Thane, State-Maharashtra,
Country-India, Pin Code-400 071.
7. Naresh Sukanraj Kothari,
Age-50 years, Occupation-Business,
Residing at-Shreenath Sada CHS,
Plot No.52, Opposite Aryan Hospital,
Sector-6, Sarsole, Nerul, Navi Mumbai,
Taluka and District-Thane, State-Maharashtra,
Country-India, Pin Code-400 071. ... Petitioners

Versus

1. The State of Maharashtra
through its Principal Secretary,
Department of Urban Development,
Mantralaya, Mumbai, Maharashtra State,
Country-India, Pin Code-400 032.

2. Navi Mumbai Municipal Corporation
Through its Addl. Commissioner (Encroachment),
Navi Mumbai, Maharashtra State, Country-India,
Pin Code-400 614.
3. Shreenathji Sadan Co-op HSG. Soc. Ltd,
through its Chairman,
Plot No.52, Sector-6, Sarsole, Nerul,
Navi Mumbai, Taluka and District-Thane,
State-Maharashtra, Country-India,
Pin Code-400 706.
4. Maharashtra State Electricity Dist. Co. Ltd.,
Nerul Section-III,
Through its Asst. Engineer ... Respondents

Mr Sarvajit Patil i/by Mr Sachin Pinjari for the Petitioners.

Mr Tejesh Dande for the Respondent No.2.

Mrs Rupali Shinde, AGP for the Respondent No.1 -State.

***CORAM: G. S. KULKARNI &
R. N. LADDHA, JJ.***

DATE : 23 MARCH 2023

ORAL ORDER (Per R. N. Laddha, J.) :

Heard Mr Sarvajit Patil, instructed by Mr Sachin Pinjari, learned counsel for the petitioners, Mrs Rupali Shinde, learned Additional Government Pleader, for respondent no.1 -State and Mr Tejesh Dande, learned counsel for respondent no.2.

2. The petitioners, who claim to be the owners and the occupiers of the shop premises on the ground floor of respondent no.3-Society building, namely Shreenathji Sadan at Nerul, Navi Mumbai, have instituted this petition seeking the following reliefs:

“a. That this Hon’ble Court may be pleased to issue a Writ of Mandamus or any other Writ, order or direction in the like nature of Article 226 of the Constitution of India thereby directing to the respondent no.2-Corporation to not to take action of demolition of the petitioners’ premises in the respondent no.3-Society;

b. That this Hon’ble Court may be pleased to direct the respondent no.2-Corporation to not take any coercive action against the petitioners without following the due procedure of law;

c. That this Hon’ble Court may be pleased to quash and set aside the impugned order dated 24th January, 2023 passed by the respondent no.2-Corporation;

d. That this Hon’ble Court may be pleased to quash and set aside the impugned notice dated 13th February, 2023 issued by the respondent no.2-Corporation to the petitioners;

e. That this Hon’ble Court may be pleased to quash and set aside the impugned notice dated 9th February, 2023 issued by the respondent no.4-MSEB to the respondent no.2-Society.”

3. In this case, there is no serious dispute on the following facts that are germane for deciding the issues that arise.

(i) The respondent-Corporation found the building to be

dilapidated and, therefore, requested a Structural Audit Report of the building from the respondent-Society.

- (ii) In response, respondent no.2-Society hired Meticulous Combines to conduct the audit. They submitted a report on March 25th, 2022 stating that the building was beyond repair and needed to be evacuated and demolished.
- (iii) Upon reviewing this report, respondent NO.1-Corporation (for short 'the Corporation') declared the building dilapidated and classified it as C-1 (ruinous and irreparable). This decision was conveyed to the respondent-Society in an order dated January 24th, 2023.
- (iv) After that the respondent-MSEB, on February 9th, 2023, sent a letter to the society requesting that they disconnect the building's electric supply.
- (v) Additionally, on February 13th, 2023, the Corporation also sent a letter to the society asking them to disconnect the water supply provided by it to the petitioners.
- (vi) It is in these circumstances the society requested the occupants of the building to vacate the premises. Out of the 19 occupants of the building, 12 have already left, with the

exception of the petitioners.

(vii) As the petitioners doubted the correctness of the Structural Audit Report of Meticulous Combines, a second audit was conducted by Consulting Structural Engineer Latesh S. Sanklecha on February 18th, 2023.

(viii) This report classified the building as C2-B category, indicating that it could be repaired without evacuation and no demolition is necessary.

4. We have perused both the Structural Audit Reports described above. It is seen from the report of Meticulous Combines that there are corrosion (structural) cracks at many places at columns, beams and chhajjas. The cracks are too wide and may tend to be of serious concern. The maximum internal part of a building is in damaged condition due to weather and corrosion effects, and the remaining portion is in very much deliberated condition. It goes on to add that at almost all locations, columns, beams, and slabs are in severely distressed condition due to extensive corrosion of reinforcement steel and exposed rebar. On the second floor, flat no.204 bedroom, a significant part of the ceiling cover concrete fallen and reinforcement exposed. Massive leakage through external as well as internal walls. The RH and core test have indicated average compression strength around 9.0 PA (less than M15) to

12.05 MPA (less than M15). The UPV test result indicates concrete is in the poor category. The HCP test result indicates 90% corrosion. Considering the overall building condition, NDT report and the fact that many RCC members, like columns, beams, slabs and chhajjas, are distressed heavily, it opines that the building cannot restore or repair. It is strongly recommended to evacuate the occupants and pull down the building.

5. Interestingly, Latesh Sanklecha's report, obtained by the petitioners, says that the report was prepared based only on shop inspection, and the inspection of all the residential flats, which forms a major part of the building, was not undertaken. According to this report, the structure's overall condition is ruinous. The report says that there are structural cracks on beams, columns and ceilings in the shop and that periodic repair and maintenance have not been done to maintain the health of the structure internally and externally. Hence, distress has increased in the structural and non-structural members of the building. Since the structure is almost 25 years old, structural and non-structural members lose their strength and regular maintenance is required to maintain the health of the structure under the supervision of a structural engineer. It goes on to add that the extra load on the structure, in any manner, is not allowed. It opines that no eviction, but civil and structural repairs on an urgent basis with waterproofing painting is required,

but the building can be repaired.

6. We are not inclined to accept the contentions as urged on behalf of the petitioners that the building is not in a ruinous and dangerous condition as categorised by the Corporation. It is significant that the petitioners are occupants only of the ground floor. The condition of the building, whether ruinous or otherwise, cannot be judged merely on the basis of an inspection/audit only of the ground floor premises, which is only a part portion of the entire building occupied by the petitioners. The structural audit report as submitted on behalf of the petitioners, in our considered opinion, is of little significance as it is prepared only on the inspection of some of the ground floor tenements. Such a report cannot be a complete report so as to determine the structural stability of the entire building. Thus, the petitioners' case relying on such a report is totally untenable.

7. In any event, as noted above, in the structural audit report as relied upon by the Corporation in coming to a conclusion that the building is in a ruinous/dilapidated condition, an extensive structural audit is undertaken in preparing such a report. There is no material placed on record by the petitioners to enable us to come to a conclusion that such a report ought not to be accepted. Besides, there is no cogent reason to attribute any illegality to this

report. Also, there is no case of malafides being alleged by the petitioners in the Corporation relying on the report. Further, the petitioners are not in a position to show that the impugned action was utterly perverse, in excess of authority or manifestly illegal. Thus, the case of the petitioners on the structural audit report as submitted by them, in no manner, would assist the petitioners so as to dislodge the conclusion of the municipal corporation, to categorize the building as dangerous and requiring immediate demolition.

8. In any event, it is a settled principle of law that the petitioners would be least affected by the demolition of the building as their rights of occupancy remain protected. It is a well-settled position in law that the petitioners are entitled to the area of their respective tenements on the redevelopment of the building.

9. Thus in our opinion, the petitioners are not well advised to invoke the jurisdiction of this Court under Article 226 of the Constitution of India on such scant material relied by them. The Writ Court would be loath to dwell on disputed issues and more particularly requiring technical expertise. In this context, a profitable reference may be made to the decisions of the Division Bench of this Court in *Diwanchand Gupta v/s. N. M. Shah & Ors.*¹

1 1971 SCC OnLine Bom 30.

and *Nathubhai Dhulji v/s. The Municipal Corporation, Bombay*², wherein it was noted that under Article 226 of the Constitution of India, it is not within the scope of a Court's writ jurisdiction to determine if a structure is actually in a dilapidated or ruinous state.

10. In *Vivek Shantaram Kokate & Ors. v/s. The Municipal Corporation of Greater Mumbai*³, it was observed that :

“ We have said this before, and we will say it again, and yet again, as often as we must: ‘this Court will always err on the side of caution. For human lives matters. Buildings can be reconstructed. A life lost is lost forever.’ The alternative is unimaginable: ‘the building was not demolished because of a stay granted by the Court. The building collapsed. People died. Therefore, people died because of the Court granted a stay.’ This is the conclusion devoutly to be avoided. A build structure is, in many ways, like the human body. Both require routine care and maintenance, and early intervention when serious problems are detected. Without this, both fail. To say then, as Mr Murthy says today, ‘that the building can be repaired’ is very like saying a life can be artificially prolonged for a little while. Whether or not to keep a life going may pose an ethical, legal or moral dilemma. A building presents no such challenge. On the contrary, it is the lives in the building that are our paramount, primary, and, perhaps, only concern. It is for this reason that we insist that unless there is a prima facie finding there cannot be an order of injunction in such matters; and in no case can such an injunction be rendered weak-kneed by tacking on to it a wholly unenforceable and redundant ‘undertaking’. That undertaking, as we said elsewhere, is useless as soon as the undertaker meets his maker. There can also be no generalized order of status quo without knowing what that status quo is, because in matters such as these, that would inevitably involved an injunction against the annual monsoons. We have also noticed, in more than one case, that while these

2 1957 SCC OnLine Bom 264.

3 Writ Petition No. 931/2019 decided on 19.08.2019 (Bom.).

status quo orders were pending and for precisely this reason, weathering that some portions of such judicially protected structures (some on busy roads near stations) actually collapsed.”

11. In view of the above discussion, we are not inclined to entertain this petition. It is accordingly dismissed. The interim order dated March 2nd, 2023 stands vacated.

12. No costs.

R. N. LADDHA, J.

G. S. KULKARNI, J.

13. At this stage, learned counsel for the petitioners prays for an extension of time, to vacate the premises. The petitioners shall vacate the premises on or before April 30th, 2023, failing which, the Municipal Corporation shall proceed to take action as permissible under the law.

R. N. LADDHA, J.

G. S. KULKARNI, J.

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