

Santosh

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

**APPEAL FROM ORDER NO. 196 OF 2023
IN
NOTICE OF MOTION NO. 581 OF 2023
IN
SC SUIT (St) NO. 1345 OF 2023**

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Jeetendra V. Reddy and ors. ...Appellants
Versus
The State of Maharashtra & ors. ...Respondents

Mr. Uday Warunjikar, i/b Asmita Jaiswal, for the Appellants.
Mr. P. P. Pujari, AGP for the State/Respondent No.1.
Ms. Smita Tondwalkar, for the Respondent/Brihanmumbai
Mahanagar Palika.

CORAM: N. J. JAMADAR, J.

DATED : 2nd MAY, 2023

ORDER:-

1. This appeal is directed against an order dated 13th February, 2023, whereby the learned Judge, City Civil Court, declined to grant ad-interim relief in the Notice of Motion No.581 of 2023 taken out by the plaintiffs in Suit (St) No.1345 of 2023.

2. The plaintiffs are tenants of the building known as Pushpa Niwas standing on Plot No.1002 (Part) Dr. R. P. Road, Mulund (West), ("the suit building"). Defendant No.4 is the owner of the suit building. The plaintiffs assert defendant No.4 purchased the suit building in the year 2007 – 2008. Nine units in the

said building are in the occupation of defendant No.4. The latter has failed to carry out tenantable repairs and refused to give permission to the tenants to carry out repairs at their costs.

3. In the month of October, 2022 the plaintiffs received an intimation dated 20th October, 2022 annexing thereto a report of the Technical Advisory Committee ("TAC") of the Brihanmumbai Mahanagar Palika - defendant No.2 that the suit building is categorized in C-1 category for immediate eviction and demolition. Another notice dated 13th January, 2023 was issued on behalf of defendant No.2 under Section 354 of the Mumbai Municipal Corporation Act, 1888 ("the Act, 1888") to vacate and pull down the suit building.

4. The plaintiffs assert the suit building is worthy of repairs. The plaintiffs have obtained report of an Architect to the effect that the suit building falls in category C-2A and it requires major structural repairs. The plaintiffs allege the impugned categorization of the suit building in C-1 category is in collusion with defendant No.4. It is alleged, with intent to deprive the tenants of the benefits of permanent alternate accommodation in accordance with the DCPR-34 Rehabilitation Scheme, the defendant No.4 has got the action initiated by the

Brihanmumbai Mahanagar Palika. Hence, the suit to quash and set aside the TAC Report dated 20th October, 2022 and the impugned notice dated 13th January, 2023 issued under Section 354 of the Act, 1888.

5. The plaintiffs took out a Notice of Motion seeking interim reliefs. By the impugned order the learned Judge, City Civil Court, was persuaded to reject the prayer for ad-interim relief opining that the plaintiffs failed to make out a *prima facie* case and there was no urgency made out by the plaintiffs for grant of ad-interim relief.

6. Being aggrieved the plaintiffs are in appeal.

7. I have heard Mr. Warunjiakar, the learned Counsel for the appellants, Ms. Tondwalkar, the learned Counsel for respondent No.2 - Brihanmumbai Mahanagar Palika and Mr. Pujari, the learned Counsel for respondent No.1 – State.

8. Dr. Warunjikar would urge that the matter requires consideration and the plaintiffs could not have been non-suited at an ad-interim stage on the premise that there was no urgency. Since a notice was issued on 13th January, 2023 calling upon the plaintiffs to vacate and pull down the suit building within seven days, the learned Judge could not have

held that there was no urgency warranting grant of an ad-interim relief.

9. The aforesaid submission carries conviction. Respondent No.2 had called upon the defendant to vacate the suit building and pull it down within seven days of the notice dated 13th January, 2023. The plaintiffs thus had a cause to seek urgent ad-interim relief.

10. I have perused the TAC Report. It has compared and contrasted the reports submitted by the structural auditors. Thereupon TAC arrived at the conclusion that the suit building falls in category C-1. Dr. Warunjikar made an endeavour to demonstrate that the report of M/s Nirman Projects, the structural auditors appointed by the plaintiffs is more elaborate and deals with all the points. Whereas the report of M/s. Prime Engineers does not address material points. *Prima facie*, the report of M/s. Nirman Projects appears more elaborate and deals with the various parts of the suit building more specifically with reference to repairs done in the past and repairs now required. However, at this stage, this Court would not be justified in delving into these aspects.

11. The Court is neither supposed nor equipped to sit in appeal over the decision of TAC. Certainly the Court is not

equipped to delve into the merits of the decision arrived at a body of experts. What properly falls within the realm of adjudication is the decision making process. Whether the TAC has arrived at a decision after consideration of the material, which bears upon the decision or it unjustifiably excluded the material which would influence the decision or whether the TAC has not provided a reasonable opportunity of hearing before taking the decision are the questions which ordinarily fall within the arena of the decision making process.

12. In the case at hand, the TAC, as indicated above, has adverted to the reports of M/s. Prime Engineers and M/s. Nirman Projects and arrived at the decision that the structure falls under C1 category. A crucial factor, which forms part of the report of M/s. Nirman Projects and has not been at all adverted to by M/s. Prime Engineers is, the repairs which the suit building has undergone. M/s. Nirman Projects has referred to the history of repairs including slab recast and column jacketing in the year 2011 – 2012 and the other repairs. The report of M/s. Prime Engineers, on the other hand, contains an endorsement against the column of repairs as, “not known”. If repairs have been carried to the suit building that would influence the decision on the structural stability and further

repair-worthiness of the building, albeit depending on the nature of the repairs. The two reports also materially differ on the brief description of the repairs to be carried out to the suit building and the resultant consequence.

13. In the aforesaid view of the mater, without questioning the decision of the TAC, in my view, the Court would be better equipped to adjudicate the issue if it is assisted by opinion of an independent structural auditor. In a controversy of this nature, there are always conflicting reports. Often the Corporation and the landlord rely on the reports which indicate that the building needs to be immediately demolished. In contrast, the reports filed on behalf of the occupants – tenants invariably suggest that the building is worthy of repairs. The case at hand is an illustration.

14. Ms. Tondwalkar, the learned Counsel for respondent No.2 sought leave to tender a compilation of documents in support of the impugned order. Evidently, respondent No.2 has not filed any affidavit-in-reply before the trial court. Apparently, the trial court did not have the benefit of the documents which are sought to be tendered before this Court in support of the impugned order. It would be in the fitness of things that the

material which respondent No.2 now presses into service is first considered by the trial court while deciding the Notice of Motion.

15. For the foregoing reasons, I am persuaded to partly allow the appeal.

16. Hence, the following order:

: O R D E R :

- (i) The appeal stands partly allowed.
- (ii) The impugned order stands set aside.
- (iii) The Head of the Department, Civil Engineering or equivalent faculty, IIT Mumbai, is requested to appoint a competent Professor/Associate Professor as a Structural Auditor to carry out the structural audit of the suit building and furnish report to the City Civil Court.
- (iv) The Professor/Associate Professor shall inspect the suit building after intimation to the parties and the designated officer Brihanmumbai Mahanagar Palika, respondent No.2.
- (v) The appellant – plaintiff shall bear all the expenses of commission including the fees of the Professor/Associate Professor.

- (vi) The appellant – plaintiff shall deposit a sum of Rs.50,000/- with the City Civil Court within a period of two weeks from today for defraying the expenses of commission and payment of fees and deposit further amount in the event of shortfall as may be directed by the learned Judge, City Civil Court, Mumbai.
- (vii) In the event of failure of the appellants – plaintiffs to deposit the aforesaid amount within the said period, this order shall stand vacated and the impugned order revived and appeal dismissed, without further reference to the Court.
- (viii) The Professor/Associate Professor, IIT Mumbai, is requested to execute the commission and submit a report on or before 7th June, 2023 to the City Civil Court, Mumbai.
- (ix) The Notice of Motion be listed before the City Civil Court on 7th June, 2023.
- (x) Liberty to move the City Civil Court for any direction with regard to the execution of the commission, before the scheduled date.

- (xi) Respondent No.2 – Brinhanmumbai Mahanagar Palika shall file affidavit-in-reply to the Notice of Motion within one week thereafter.
- (xii) The learned Judge, City Civil Court, Mumbai, is requested to make an endeavour to decide the Notice of Motion as expeditiously as possible after considering the material on record including the report to be filed by IIT, Mumbai.
- (xiii) Till then respondent No.2 Brihanmumbai Mahanagar Palika shall not take any preceptitative action.
- (xiv) In the meanwhile, if the tenants/occupants of the building chose to occupy units of the suit building, they shall submit an undertaking in the City Civil Court that they shall occupy the units in the suit building at their own risk as to costs and consequences and neither the Brihanmumbai Mahanagar Palika nor the landlord shall be responsible for the consequences in case of any untoward incident, within a period of two weeks from today.
- (xv) Appeal stands disposed.

- (xvi) Copy of this order be forwarded to the Director, IIT Mumbai and Head of the Civil Engineering/ equivalent Department IIT Mumbai, forthwith.
- (xvii) All concerned to act on an authenticated copy of this order.
- (xviii) In view of disposal of the appeal, interim application(s), if any, also stand(s) disposed.

[N. J. JAMADAR, J.]