

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.706 OF 2022
WITH
INTERIM APPLICATION NO.10478 OF 2022
IN
APPEAL FROM ORDER NO.706 OF 2022

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Munshi Bhavan Welfare Association MumbaiAppellant/Applicant
V/S

Municipal Corporation of Greater Mumbai & Anr.Respondents

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Mr. Vivek Kantawala a/w Mr. Amey Patil, Mr. Vivek M. Sharma i/b Mr. Jash
B. Vyas for the Appellant/Applicant.

Ms. Dhriti Kapadia with Ms. Smita Tondwalkar for Respondent-MCGM.

Mr. Mark S. Bhosale, Junior Engineer B & F K-West Ward present in Court.

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CORAM: SANDEEP V. MARNE, J.

DATE : DECEMBER 18, 2023.

P.C.:

1 The challenge in the present Appeal is to the order dated 16 October 2020 passed by the City Civil Court dismissing Draft Notice of Motion tendered in L.C. Suit No.962 of 2020. The Appellant/Plaintiff has filed L.C. Suit No.962 of 2020 challenging the notice dated 7 August 2020 issued by the Municipal Corporation under the provisions of section 354 of the Mumbai Municipal Corporations Act, 1888 (**the Act**). It appears that before issuance of the notice dated 7 August 2020, the Municipal

Corporation had issued notice under provisions of section 353-B of the Act calling upon the owners and the occupants to carry out structural audit of the suit structures. It appears that the owners and occupants carried out structural audit through their respective structural auditors and submitted reports before the Municipal Corporation. As per the structural audit report submitted by the owner, structure was classified into C-1 category for immediate evacuation and demolition. On the contrary as per the structural audit report of the occupants, the building was classified into C-2A category for evacuation and partial demolition required for major structural repairs. In view of the conflict in reports and as per the directives of this Court in its judgment and order dated 23 June 2014 in ***Municipal Corporation of Greater Mumbai vs. State of Maharashtra***, (2014) 6 Bom CR 860, the case was referred before the Technical Advisory Committee (TAC).

2 The TAC conducted visual inspection of the building on 22 July 2020 in presence of the parties and their structural auditors. After going through the audit reports submitted by both the sides as well as the findings recorded by the TAC during the visual inspection carried on 22 July 2020, the TAC drew following conclusions:

TAC Conclusion:-

In this case, after going through the details from both the consultant and site visit, it is observed that the parameters of the structural audit report of both the consultant like Ultrasonic Pulse Velocity Test, Rebound hammer Test, Half Cell potential meter test, carbonation test, core test are not confirming to the provision of I.S. Code. As per the site observation reinforcement, structural members

found cracked, damaged and corroded. Considering contents of audit report of both the structural consultants' test result, site observation and further discussion in the meeting, it is unanimously recommended that the structure known as Munshi Bhavan" Building, Situated at J. P. Road, Andheri (W), Mumbai-400 058 in K/West Ward, falls in C-1 category and should be vacated and pulled down immediately following due process of law as the said building is unsafe for habitation.

Designated officer, K/West ward shall therefore take necessary action as per the policy guidelines dated 25.05.2018.'

3 Thus after going through the structural audit reports submitted by both the owner and occupants, the TAC has arrived at a conclusion that the parameters of the structural audit reports of both the consultants were not conforming to the provisions of IS Code.

4 Mr. Kantawala, the learned Counsel appearing for the Appellant would submit that the above conclusion drawn by the TAC would indicate that both the audit reports have been rejected by TAC. He would therefore submit that it would be necessary to direct appointment of independent structural auditor like IIT Bombay or VJTI so that the real picture in respect of the suit structures can be placed before the Court. Alternatively, he would submit that the suit is ready for trial and therefore the hearing of the suit itself can be expedited. He would further submit that there is no danger of any mishap happening as the notice structures are ground floor structures.

5 I am unable to agree with the submission of Mr. Kantawala that both the structural audit reports have been rejected by TAC. What TAC

has observed is that the parameters of the structural audit conducted by both the auditors by performing various tests such as ultrasonic pulse velocity test, rebound hammer test, half cell potentiometer test, carbonation test, core test etc. do not conform to the provision of IS Code. This essentially indicates that in the tests conducted by both the structural auditors, the parameters specified in the IS Code are not met. To illustrate the result of ultrasonic pulse velocity test, in owners audit report is less than 3 kms. whereas the result in tenant's audit report is 1.21-1.25 k.ms. As per IS Code, if the test of ultrasonic pulse velocity is below 3 k.m./sec., the quality of concrete is classified as doubtful. Thus as per the reports submitted both by the owners as well as tenants, the structure has failed in the ultrasonic pulse velocity test. Similar is the position in respect of the balance tests as well. Thus what TAC has observed is that both the reports of the structural auditors of owner as well as tenants prove that the parameters prescribed in the IS Code are not met in the various tests conducted by both the auditors.

6 In addition to consideration of the test reports of both the structural auditors, the TAC has conducted visual inspection of the building and has arrived at a conclusion that the structure falls in C-1 category and needs to be evacuated and pulled down immediately.

7 It is Mr. Kantawala's submission that as per the judgment of this Court in *Municipal Corporation for Greater Mumbai* (supra) it is

incumbent upon TAC to conduct various specified tests as per direction No.9B(ii). In this regard the directions issued by this Court in paragraph 9 of the judgment are reproduced thus:

‘9. Accordingly, for the present, in the absence of any policy in that behalf, the following guidelines are issued:-

a) The present order will be applicable only in respect of those buildings which are highly dilapidated and dangerous and/or classified in Category C-1 by the Corporation, whether owned by a private party or by the Corporation or any other authority and in respect of which building, either a notice under section 354 has been issued or the Corporation has issued a Letter of Evacuation to their tenants and/or occupiers of the buildings.

b) The Corporation will, before classifying a building under category C-1, conduct their own independent inspection and assessment with the help of the Engineers of their Department and carry out a survey of such building(s). The report of Structural Audit shall be taken into account.

c) The Corporation shall consider the report of Structural Engineer appointed by the owners and/or occupants classifying the building as dilapidated and dangerous. If the owners and/or the occupants bring conflicting reports on the status of the building, the Corporation shall refer the matter to Technical Advisory Committee (TAC) under the Chairmanship of Director (ES&P) with at least 3 other members, viz. City Engineer, Chief Engineer (DP) and Chief Engineer (P&D).

d) The TAC shall:

i) Carry out a visual inspection of the state of the internal and external plaster, plumbing, drainage, whether the doors and windows close properly, whether steel in columns is exposed, whether there is settlement in the foundation, deflections/sagging, major cracks in columns/beams, seepages/leakages, staircase area and column condition, lift well walls, U.G. tank, O.H. tank column condition, parapet at terraces, chhajjas, common areas, terrace water proofing.

ii) Carry out specific tests like ultrasonic pulse velocity test, rebound

hammer test, half cell potential test, carbonation depth test, core test, chemical analysis, cement, aggregate ratio as may be considered by TAC as necessary.

e) If it is found after due notice that the building(s) is in a highly dangerous or in dilapidated condition, then in that event, the Corporation shall also make a list of the names of the tenants and/or occupiers in the said building and the carpet area of the premises in their respective occupation and possession Including the floor at which the same has been occupied.

f) A copy of such list will be furnished to the landlord and/or owner/builder of the said building. The Corporation thereafter, will issue a notice under section 354 of the said Act calling upon such tenants and/or occupiers to vacate the said premises and if such notice under section 354 of the said Act has already been issued, then in that event the Corporation will give 7 days' notice to such tenants/occupiers, copies whereof will be furnished to the landlord for vacating the said building(s). If such tenant and/or occupier is not available, the Corporation shall affix such notice or Letter of Evacuation on any part of such premises.

g) The Corporation shall then take steps to turn off the water, supply, electric power and gas to such building immediately before the removal of occupiers.

h) In the case of a municipal owned building(s), the Corporation will Issue Letter of Evacuation to every person in occupation of the said building or part thereof to vacate the said building along with their belongings within the said period of 7 days from date of issuance of such notice of Letter of Evacuation in respect of municipal owned building(s). The notice issued to such occupiers shall contain the name of the occupier and the area in his occupation and also the floor at which the premises are located. In case, if such tenant and/or occupier is not available, the Corporation shall affix such notice or Letter of Evacuation on any part of such premises.

i) In the event, a person occupying such tenement whether of the privately owned building(s) or building(s) owned by Corporation or any

other authority refuses to vacate the said premises, then the police shall remove such person from the said premises by using nominal force if required for the same.

j) The police may use such force as is reasonably necessary to remove such person and/or occupiers and/or allottee along with their belongings from the said premises, without causing damage to their movables.

k) The Corporation may then demolish such dangerous and dilapidated building.

l) The rights of the tenants and/or occupiers and/or owners in respect of the said premises/property will not be affected by virtue of evacuation or demolition carried out by the Corporation of such dilapidated and dangerous building in exercise of the power under section 354 of the said Act or by virtue of the fact that the Corporation is the owner of the premises. Such tenant and/or occupier and/or owner will be entitled to re-occupy the premises in respect of the same area after the reconstruction of the building, subject to the prevalent provisions of law pertaining to redevelopment of the property or subject to any arrangement or agreement arrived at by and between such tenants and/or occupiers with the owner of the building. Any action of evacuation/removal/demolition will not affect the *inter se* rights of owners if there be more than one owner or there is a dispute as to the title of the property.

m) If there are any pending suits/proceedings and there are any restraint orders passed, the Corporation shall be free to apply for vacating and/or modifying such orders, which applications shall be decided on its own merits and in accordance with law.

n) In respect of the Municipal buildings, it shall be the duty of the Corporation to provide alternate accommodation as early as possible in any of their premises to such tenant and/or occupier of the Corporation owned building till and until the said building is reconstructed by the Corporation or the tenancy of any of such occupier is determined in accordance with law.

o) In respect of the private owned buildings, if such building falls in cessed category as contemplated under the provisions of the Maharashtra Housing and Area Development Act, 1976, then in that event, it will be the duty of MHADA/MBR&RB to provide temporary alternate arrangement in a transit camp for transit accommodation, in accordance with law, as early as possible.

p) In case privately owned buildings are demolished by the Corporation in exercise of power under Section 354 read with the present order, then the Corporation shall, while granting sanction of redevelopment, impose a condition in IOD (Intimation of Disapproval) that no Commencement Certificate will be issued under section 45 of the MRTP Act, 1966 unless and until an Agreement either providing a Permanent Alternate Accommodation in a newly constructed building or a settlement is arrived at by and between the tenants and/or occupiers and the landlord in respect of the said demolished premises, is filed with the Corporation at the earliest.

q) In case of buildings which have suddenly collapsed, to determine the reasons for such collapse, it is desirable that forthwith a Committee be constituted headed by a former Municipal Commissioner and consisting of Former Chief Engineer of MHADA alongwith a Professor of VJTI and a Professor of IIT, Powai having expertise in Structural Engineering as also an employee of the Corporation, holding a post not lower than that of the Director (E.S.&P.) and such Committee will determine the cause of such collapse and *inter-alia* identify whether any Architect and/or Consultant and/or Municipal officers or other person/s is/are responsible in any manner whatsoever for such a collapse. The reference to the Committee will not in any way be a hindrance in the criminal investigations/proceedings that may have commenced or may be commenced under the relevant criminal law. This no way would restrict the State of Maharashtra to pass appropriate order for any such inquiry or investigation.'

7 Thus under direction 9B(ii), it is not mandatory for TAC to conduct specified tests in every case since tests are to be conducted as may be

considered necessary by TAC. In the present case, TAC has noticed that the structure has failed in various tests as per the reports of both the structural audits. In that view of the matter, fresh conduct of tests through TAC is not at all warranted.

8 I therefore do not find any error being committed by the City Civil Court in rejecting the Notice of Motion filed by the Appellant. The Appeal being devoid of merits, is dismissed without any orders as to costs.

9 In view of the disposal of the Appeal from Order, the Interim Application does not survive and the same is accordingly disposed of.

10 After the order is pronounced Mr. Kantawala would request for continuation of stay granted by this Court vide order dated 9 November 2020. Considering the unanimous findings by the structural auditors both of owner as well as tenants, the request for continuation of stay is rejected. However, four weeks time is granted to vacate the suit structures in view of Mr. Kantawala's submission that the residents (members of the Appellant-Association) have already filed necessary undertakings in this Court with regard to occupation of the suit structures at their own risk.

(SANDEEP V. MARNE, J.)