

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION No.3240 OF 2021**

Vs.

**CORAM : SUNIL B. SHUKRE &
RAJESH S. PATIL, JJ.**

2. After hearing learned counsel for the Petitioners for some time, it appears to us that there is a question of disputed facts involved in this petition and it arises from the contention of the petitioners that their shops are situated in a building bearing House No.135/A while Corporation says that shops of the Petitioners are situated in building bearing House No.135/0. The demolition notice has been issued in respect of House No.135/0 and today part of the building, as informed by learned counsel for the Petitioners, has been demolished and the remaining building was to be demolished today morning itself, but after the officers of the Corporation were informed of the date granted by this Court today, the action of demolition is stopped. In these circumstances, learned counsel for the Petitioners seeks

interim relief from this Court. We must say that it is now too late in the day to grant interim relief in the matter which was filed in 2021 and wherein there is no latest structural audit report submitted by the Petitioners in support of their contention that the building in question is not dilapidated, but is the one which is reparable and can be brought back to order. Even, the structural audit report submitted by the Petitioners categorizing the building in question as C-2A is of the year 2021 and today in the year 2023, it is of no use for determining the condition of the building in question. That apart, the structural audit report of the Petitioners also says that structural repairs are required to be carried out after evacuation of the building. As per the demolition notice of the Corporation, evacuation of the building is also necessary. In other words, in either of the cases, evacuation of the building in question is necessary. Of course, learned counsel for the Petitioners submits that their building being House No. 135/A, which is in good state of health, the Petitioners are not required to vacate the building. As regards this submission, we must say that it gives rise to a disputed question of fact, which can be determined only by initiating appropriate proceedings before Civil Court of competent jurisdiction. Therefore, here in this petition filed under Article 226 of the Constitution, Petitioners cannot be heard on any question which involves disputed questions of facts. Even otherwise, by own contentions of the Petitioners, about which we have already adverted, the building in question requires evacuation although its a different matter that according to the Petitioners, the building is reparable while the Corporation contends that it is

beyond repairs and requires its immediate pulling down.

3. With these facts being there on record, the Petitioners in any case will have to vacate the building so as to protect their own lives and property and also help the Corporation to protect the lives and property of others. If there is any issue about protection of rights of the Petitioners as tenants, it can be taken care of by the Corporation, which shall, before demolition of the shops of the petitioners, carry out necessary measurements of the shops of the Petitioners and issue area certificates accordingly. As regards providing of transit rent and the question of permanent alternate accommodation, these issues can be worked out later on with the owner and developer of the property. But, for the time being, the precious life of human beings must be given its due importance and, therefore, we would expect the Petitioner to vacate the shops under their occupation with immediate effect and we would also expect the Corporation to issue necessary area certificates to the petitioners before the demolition.

4. In this view of the matter, the prayer for grant of interim relief is rejected.

5. We are also of the view that with these directions issued by this Court, nothing survives in this petition and, therefore, the petition is disposed of in terms of the observations and directions made hereinabove.

(RAJESH S. PATIL, J.)

(SUNIL B. SHUKRE, J.)