



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.479 OF 2023
WITH
INTERIM APPLICATION NO.12930 OF 2023**

Sarfaraz Sharafali Furniturewalla ... Appellant
versus
The Mumbai Municipal Corporation and Ors. ... Respondents

Mr. Rustom Pardiwalla i/by Ms. Shakti Deengar, Mr. Rajkumar Mishra, for Appellant.
Mrs. Smita Tondwalkar for MCGM.
Mr. Karl Tamboly with Ms. Faiza Dhanani, Mr. Bharat Jain, Mr. Manal Dhanani i/by
Cue Legal for Respondent No.3.

CORAM: N.J.JAMADAR, J.

DATE : 27 JUNE 2023

P.C.

1. Heard the learned Counsel for the Appellant.
2. The challenge in this appeal is to an order dated 31 May 2023 passed by the learned Judge, City Civil Court, Borivali Division, in Notice of Motion No.1729 of 2023 in L.C.Suit No.1330 of 2023, whereby the learned Judge declined to grant ad-interim reliefs.
3. By the said Notice of Motion, the Plaintiff, who claimed to be in the occupation of Flat No.5, 2nd Floor, Saigal House, Pali Hill Road, Khar, Mumbai – 400 052 (the suit premises), as a tenant thereof, since more than 60 years, has assailed the legality and validity of the notice issued by the Municipal Corporation under Section 354 of the Mumbai Municipal Corporation Act, 1888 (the Act, 1888), based on the

Technical Advisory Committee (TAC) report, which has categorized the building in which the suit premises is situated as C-1, requiring immediate eviction and demolition.

4. The learned Counsel for the Appellant submitted that the impugned notice was issued by Respondent No.1 at the behest of Respondent No.3 and the TAC report as well as the impugned notice are malafide. It was submitted that the TAC has not carried out an independent exercise to assess the structural stability of the building and by mere comparison of the reports of Structural Consultants appointed by Respondent No.3 and the Appellant-Plaintiff, arrived at an unjustifiable conclusion that the building falls in C-1 category.

5. The learned Counsel for the Appellant further submitted that there are disputes between the Plaintiff and the landlord over the permanent alternate accommodation to be provided and the compensation to be paid in the event of redevelopment of the suit building and the impugned notice has been engineered by the landlord to dispossess the Plaintiff.

6. I have perused the TAC report and the impugned order.

7. It is well recognized that this Court is neither equipped nor has the jurisdiction to sit in appeal over the finding arrived at by the TAC. What is open for judicial scrutiny is the decision making process and not the decision of the body of experts. From the perusal of the TAC report, it appears that the TAC along with the

Structural Consultants of the Plaintiff and the landlord had inspected the suit building on 11 April 2023 and after considering the condition of the building as well as the reports submitted by the Structural Consultant, arrived at a conclusion that the building falls in C-1 category. In the face of the report of the TAC, the allegations of malafide, which are, as is well recognized, easy to make than prove, do not deserve countenance.

8. In any event, from the tenor of the plaint, it appears that the principal grievance of the Appellant-Plaintiff is of the alleged refusal of the landlord to give permanent alternate accommodation and compensation, as agreed between the Plaintiff and the landlord. That surely furnishes a cause of action to pursue the remedies against the landlord in the event of redevelopment as the rights of a tenant are adequately protected, under the provisions of MMC Act, 1888 and the Maharashtra Rent Control Act, 1999.

9. In the circumstances, the learned Judge, City Civil Court cannot be said to have committed any error in declining to grant ad-interim relief.

10. Hence, the Appeal stands dismissed.

11. The Municipal Corporation shall, however, measure the area in the occupation of the Appellant in the presence of the Appellant and the landlord.

12. Interim Application also stands disposed.

(N.J.JAMADAR, J.)