

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.703 OF 2023
WITH
INTERIM APPLICATION NO.14762 OF 2023

Mrs. Zulekha Ali Mohd. & Ors. ...Appellants

Versus

Municipal Corporation for Gr. Mumbai & Ors. ...Respondents

APPEAL FROM ORDER NO.704 OF 2023
WITH
INTERIM APPLICATION NO.14764 OF 2023

Mrs. Ayesha Iqbal I. Bhayat & Ors. ...Appellants

Versus

Municipal Corporation for Gr. Mumbai & Ors. ...Respondents

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Mr. Vishal Kanade, i/b. Mr. J. J. Shah & Ms. Priti S. Merchant, for Appellant in both petitions.

Mrs. Smita Tondwalkar for Respondent No.1 in both petitions.

Mr. G. S. Godbole, Senior Advocate i/b. Mr. Mandar Joshi a/w. Ms. Devanshi Joshi, Mr. Bishwajet G. Mukherjee for Respondent Nos. 2(a) to (c) in both petitions.

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CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 15 SEPTEMBER 2023.
PRONOUNCED ON : 27 SEPTEMBER 2023.

JUDGMENT

These appeals are filed challenging order dated 08 August 2023 passed by the City Civil Court dismissing Notice of Motion No. 3703 of 2016 filed seeking temporary injunction to restrain the defendants from demolishing suit structure or dispossessing Plaintiffs in pursuance of Notice dated 27 July 2015 issued under the provisions of Section 354 of the Mumbai Municipal Corporation Act 1888. For the sake of convenience, parties in the appeal are referred in the present Order by their original nomenclature in the Suit as Plaintiffs and Defendants.

2. The Plaintiffs claim themselves to be tenants in respect of building known as 'Hermione House'. It appears that the structure comprises of multiple houses bearing No. 218, 219, 83, 84 and 85 situated at DeMello Compound, Line No.1 off S. V. Road, Andheri (West), Mumbai 400058. The Suit structure bears House Nos. 83 and 85. Defendant No. 2 is the landlord and owner of the buildings. It appears that there have been litigations in the past between the landlord and the tenants over tenancy issues, details of which are not relevant for deciding the present appeals.

3. Since the building was over 30 years old, the Municipal Corporation issued notice dated 08 June 2015 under provisions of Section 353-B of the Act of 1888 calling upon the owners/occupants to submit structural stability report. Plaintiffs appointed structural engineer

Shri. Hiren Tanna by letter 02 July 2015. The Defendant No.2 landlord appointed Sardar Patel College of Engineering (**SPCE**) as its structural auditor. In the meantime, an engineer of Municipal Corporation visited the building on 12 June 2015 and 16 June 2015 and reported dangerous condition of the building. The Municipal Corporation therefore issued Notice under Section 354 of the Act of 1888 on 27 July 2015.

4. Both Plaintiffs as well as Defendant-landlord submitted their respective structural audit reports. Plaintiffs' structural auditor classified the suit structures bearing house No.83 and 85 into C-3 category and recommended only minor repairs. On the contrary, landlord's structural auditor SPCE classified the house bearing No. 85 into C-1 category and House No. 83 into C2-A category. Thus House No. 85 was recommended for evacuation on urgent basis and demolition. However, SPCE recommended demolition of building No. 83 as well since the same was more the 70 years old and if house No.85 was to be demolished, then the structure bearing house No.83 was also recommended to be demolished.

5. Both the reports were placed before Technical Advisory Committee (**TAC**) which submitted report on 29 April 2016 recommending evacuation and demolition considering dilapidated condition of the building. Plaintiffs instituted LC Suit No.1906 of 2016 and 1907 of 2016 before City Civil Court challenging Notice dated 27 July 2015 and filed Notice of Motion seeking temporary injunction from demolishing the suit structure. The City Civil Court has rejected the

Motion by order dated 08 August 2023, which is the subject matter of challenge in the present appeals.

6. Mr. Kanade, the learned counsel appearing for Appellants would submit that the suit structures have been erroneously recommended for demolition. That Plaintiffs' structural auditor has classified the suit structures into C-3 category which required mere minor repairs. That in view of vast difference between the recommendations of the two structural audit reports, TAC ought to have appointed its own and independent structural auditor which is not done in the present case. He would submit that TAC did not even personally visit the suit structures and has blindly relied upon structural audit report of SPCE. That it was incumbent on TAC to record its own observations with regard to structural stability of the building, which has not been done. That therefore the findings of TAC are perfunctory and cannot be relied upon. In support of his contention, Mr. Kanade places reliance on judgment of this Court in ***Narendra Ratilal Shah & Ors. Vs. MCGM & Ors.*** in Writ Petition (L.) 8972 of 2021 decided on 08 April 2021 and judgment in ***Dattaram H. Mohite & Ors. Vs. MCGM***, Appeal from Order (St.) No.95738 of 2020 decided on 08 December 2020.

7. *Per contra*, Mr. Godbole, the learned senior advocate appearing for the Defendant-landlord would oppose the petition. He would submit that in the light of submission of a report by an expert committee, the scope of interference by this Court lies in extremely narrow compass. That since the Committee comprising of experts have

recommended demolition of the building, this Court would not sit in appeal over the decision of the Committee. He would counter submissions made on behalf of Plaintiffs about the failure to conduct visit by TAC by submitting that a post graduate engineer appointed by MCGM has visited site with ward staff on 12 June 2015 and 16 June 2015. That the structural audit report submitted by landlords is by an institute of repute and its findings cannot be questioned. That in the structural audit conducted by the auditor nominated by Plaintiffs, Non Destructive Test (NDT) was not conducted in respect of house No.83 and 85. That therefore the structural audit report relied upon by plaintiffs is faulty. In support of his contention Mr. Godbole would rely upon judgment of this Court in *Mansukhlal Narottamdas Kothari & Ors. Vs. The Commissioner, MCGM & Ors.*, Appeal from Order No. 780 of 2022 decided on 25 April 2023. Lastly Mr. Godbole would submit that notwithstanding demolition of the suit structures, the landlords would recognize tenancy rights of Plaintiffs in respect of area in their occupation as duly certified by Municipal Corporation and shall induct them as tenants in the newly constructed structure subject to payment of rent as may be fixed in accordance with law.

8. Mr. Kanade in rejoinder would express an apprehension about the time taken in reconstruction of the new building and submit that in absence of any definitive timeline for commencement of construction and payment of any transit rent, the tenants would be out on streets for indefinite time.

9. Rival contentions of the parties now fall for my consideration.

10. In the present case, the suit structures are directed to be demolished under provisions of Section 354 of the Act of 1888. Plaintiffs claim themselves to be tenants in respect of suit structures. Section 354 of the Act of 1888 providing for dilapidated condition of structures which are ruin or are likely to fall provides for protection of rights of the tenants after demolition of the structure. The section reads thus:

“354. Removal of structures, etc., which are in ruins or likely to fall

(1) If it shall at any time appear to the Commissioner that any structure (including under this expression any building, wall or other structure and anything affixed to or projecting from, any building wall or other structure) is in a ruinous condition, or likely to fall, or in any way dangerous to any person occupying, resorting to or passing by such structure or any other structure or place in the neighbourhood thereof, the Commissioner may, by written notice, require the owner or occupier of such structure to pull down, secure or repair such structure, [subject to the provisions of section 342] and to prevent all cause of danger therefrom.

(2) The Commissioner may also if he thinks fit, require the said owner or occupier, by the said notice, either forthwith or before proceeding to pull down, secure or repair the said structure, to set up a proper and sufficient hoard or fence for the protection of passers by and other persons, with a convenient platform and handrail, if there be room enough for the same and the Commissioner shall think the same desirable, to serve as a footway for passengers outside of such hoard or fence.

(3) If it shall appear to the Commissioner that any building is dangerous and needs to be pulled down under sub-section (1),

the Commissioner shall call upon the owner, before issuing notice thereunder, to furnish a statement in writing signed by the owner stating therein the names of the occupiers of the building known to him or from his record, the area in occupation and location of premises in occupation, possession of each of the respective occupiers or tenants, as the case may be.

(4) If he fails to furnish the statement as required by sub-section (3) within the stipulated period, then the Commissioner shall make a list of the occupants of the said building and carpet area of the premises in their respective occupation and possession along with the details of location.

(5) The action taken under this section shall not affect the *inter se* rights of the owners or tenants or occupiers, including right of re-occupation in any manner.

Explanation. For the purposes of this section, “the tenant” shall have the same meaning as assigned to it in clause (15) of section 7 of the Maharashtra Rent Control Act, 1999].”

11. Sub-section (5) of Section 354 provides that the action taken under Section 354 shall not affect *inter se* rights of the owners or tenants or occupiers, including right of re-occupation in any manner. There is thus no doubt to the proposition that even if suit structures are demolished, the tenancy rights of Plaintiff-tenants would not be extinguished.

12. In the present case, there are conflicting reports of structural auditors appointed by Plaintiffs and Defendant-landlords. There is great degree of difference between recommendations made by both the structural auditors. In the audit report of SPCE, house No. 85 is categorized as ‘C-1’. Though house No. 83 and 84 are categorized as

‘C2-A’, it is recommended by SPCE that even those structures need to be pulled down since the other structures bearing house No. 218, 219 and 85 are to be demolished. As against this, the structural audit report of Plaintiffs categorizes house No.83 and 85 into C3 category and suggested only minor repairs. However, it appears that the structural auditor appointed by Plaintiffs did not carry out Non-Destructive Test (NDT) in respect structures bearing house No.83 and 85. In view of non-conduct of ND tests, it would be dangerous to rely upon the categorization suggested in respect of House Nos. 83 and 85 by the said structural auditor. Therefore, in respect of suit structures bearing House Nos. 83 and 85, it cannot be stated that there are conflicting reports.

13. Mr. Kanade has strenuously contended that TAC did not carry out personal visit in respect of the suit structures, which is mandatory. In this regard, reliance is placed on judgment of this Court in ***Narendra Ratilal Shaha*** and ***Dattaram H. Mohite*** (supra). In both those cases, TAC had conducted site visits, which was the main factor that weighed with this Court to accept TAC’s findings. It is therefore contended by the Plaintiffs that recommendations of TAC without conducting site inspection in the present case is faulty. However, report of TAC indicates that an engineer was nominated by the TAC to conduct site observations after submission of conflicting reports. The said engineer has inspected structure and submitted his observations for perusal of TAC. Therefore, it cannot be stated that there is blind reliance on structural report of SPCE. As a matter of fact, it was not even

necessary for the Municipal Corporation to refer the matter to TAC in absence of any conflict in reports of structural auditors, as report of Plaintiffs' auditor is to be ignored in absence of conduct of ND tests. Nonetheless, the Municipal Corporation referred the matter to TAC, which not only considered reports of both auditors, but also deputed an engineer to conduct site inspection. In the facts and circumstances of the case, this is substantial compliance with the guidelines formulated on the subject.

14. It must also be noted that SPCE is not just an institute of repute, but this Court has come across cases where TAC has chosen SPCE along with IIT-Bombay and VJTI for carrying out independent structural audit of buildings in many cases. TAC therefore cannot be faulted for relying upon SPCE's categorical recommendations for demolition of suit structures in the light of failure on the part of Plaintiffs' structural consultant in conducting ND tests.

15. Appellants expect this Court to discard TAC's recommendations, which I am afraid would be beyond this Court's expertise as well as purview. Once it is found that there has been a substantial compliance with the guidelines, it will not be for this Court to sit in appeal over findings of TAC. In *Dattaram H. Mohite* (supra), relied upon by Mr. Kanade, this Court has held that once there is substantial compliance, interference in findings of TAC would not be warranted. Narrow scope of Courts in interference over recommendations of TAC is highlighted by this Court in *Mansukhlal Narottamdas Kothari* (supra).

This Court has held in 15 to 20 as under -

“15. The first TAC report considered the structural audit report of IIT Mumbai and M/s. Ree Structure. After inspection of the suit building by the members of the TAC on 26 December 2018 and hearing held on 3 January 2019 in which the structural engineers of IIT, Mumbai and M/s. Ree Structure participated and their reports considered, the TAC classified the suit building as C1. The second TAC report took into account the report of M/s. CSR Consultant and Associates, another structural auditor, who carried out the structural audit at the instance of the tenants, in addition to the report of IIT Mumbai and M/s. Ree Structure. The TAC again opined that the suit building deserves to be categorized as C1.

“16. In the backdrop of the aforesaid technical reports, the nature of the inquiry which the Court can embark upon assumes significance. Certainly, the Court is not equipped to delve into the merits of the decision arrived at by a body of experts. What properly falls within the realm of adjudication is the decision making process. Whether the authority has arrived at a decision after consideration of the material which bears upon the decision? Has the authority unjustifiably excluded the material which would influence the decision? Is the decision arrived at by the authority so unreasonable that no prudent person could arrive at such a decision? Has the authority provided a reasonable opportunity of hearing to the affected party before taking the decision?

17. These and the like are the questions which crop up for consideration when the decision making process is to be tested. The extent to which the Court can delve into the validity and correctness of TAC has been considered by this Court in a number of decisions. A profitable reference, in this context, can be made to a Division Bench judgment in the case of Khalil Ahmed Mohd. Ali Hamdulay and Ors. V/s. Municipal Corporation of Greater Mumbai' wherein after adverting to the previous precedents, the Division Bench, inter alia, culled out the following propositions-

"(a) It is never for a Court in exercise of its limited writ jurisdiction under Article 226 of the Constitution of India to decide whether a particular structure is or is not actually in a ruinous or dilapidated condition see: Diwanchand Gupta V NM Shah & Ors.; Nathubhai Dhulaji V Municipal Corporation", (b) The rights of tenants/occupants are not

harmd by demolition ordered and carried out. These rights are adequately safeguarded by Section 354(5) of the MMC Act and by the provisions of the governing Maharashtra Rent Control Act 1999 which fully occupies the field regarding tenancies of built premises in Maharashtra. The Supreme Court in *Shaha Ratansi Khimji & Ors. V Kumbhar Sons Hotel Pvt. Ltd. & Ors.* now makes it clear that the rights of tenants and occupants are unaffected by the required demolition. (f) In order to succeed a Petitioner before the Court must be able to show that the impugned action suffers from *Wednesbury* unreasonableness, ie it is so unreasonable that no rational person could, having regard to the fact of the case, ever have reached it. There is no scope in such cases for any larger judicial review or invoking the doctrine of proportionality. In other words the decision must be shown to be utterly perverse, or in excess of authority or manifestly illegal. (g) It is never sufficient merely to allege *mala fides* without particulars While direct evidence may not always be available as proof of *mala fides*, they must nonetheless be established. In the words of the Supreme Court, allegations of *mala fides* are more easily made than proved, and the very seriousness of such allegations demands proof of high order of credibility."

18. In the case of *Mahendra Bhalchandra Shah and Ors. V/s. Municipal Corporation of Greater Mumbai and Ors.*" the Division Bench reiterated that the Court is not permitted or even capable of questioning as to whether the building is dangerous as to warrant immediate demolition, as follows:

33. It is now clear that a Court is not permitted or even capable of determining whether a building is truly so ruinous as to warrant its demolition. We do not assess the structural condition of the building (and the chawl in question is very much a 'building'), or its structural vulnerability. We only assess the vulnerability in law of demolition notices or the TAC recommendation or order. In other words, we address ourselves not to the decision itself, but to the process by which it was reached."

19. *Meghji Nisar & Ors. V/s. Municipal Corporation of Greater Mumbai and Ors.*" A learned Single Judge of this Court in the case of *Pravinchandra* had an occasion to consider the challenge to the TAC

Report in an Appeal from Order. The observations in paragraph 10 are material and, hence, extracted below:

"10. Moreover, the TAC is an independent Expert Committee', which is appointed as per the directions given by this Court in Civil Writ Petition No.1135 of 2014, which is supposed to take independent decision in all these matters, wherein there are conflicting reports submitted by the occupants- tenants and the landlord. Therefore, being totally an impartial and independent 'Authority and especially when the Technical Advisory Committee' is consisting of the 'experts', neither this Court, nor the Trial Court is expected to sit over the said TAC's report and take any different view of the matter."

20. The legal position which, thus, emerges is that the Court is neither supposed nor equipped to sit in appeal over the decision of the TAC. If the decision making process cannot be faulted at, the Court would be slow in delving into correctness of the decision of TAC. The Court cannot lose sight of the fact that in a controversy of this nature, often there are conflicting reports. Often the Municipal Corporation and the landlords rely on reports which indicate that the building needs to be immediately demolished. In contrast, the report filed on behalf of the occupants/tenants invariably suggests that the building is worthy of repairs. Herein comes the *Raison d'etre*, and the role of TAC as an independent and expert body TAC.

16. Therefore, it would not be possible for this Court to sit in appeal over the recommendations of TAC. I am therefore of the view that no *prima facie* case was made out by the Plaintiffs for grant of any interim injunction.

17. As submitted by Mr. Godbole, the rights of Plaintiffs as tenants would be sufficiently protected under provisions of Section 354 of the Act of 1888. A statement is made on behalf of the landlords that Plaintiffs would be inducted as tenants in the newly constructed structure

in respect of same area which is currently occupied by respective occupants on payment of rent determined in accordance with law. In my view, this would sufficiently protect the interest of the Plaintiffs. The only apprehension expressed by them is about lack of any assurance about the timeline for construction of new building after demolition. It is true that the tenants cannot be kept waiting for years together upon demolition of structures in their occupation. I therefore hope and trust that the landlords will take immediate steps for construction of new building once suit structures are demolished, so that tenants are accommodated in the rebuilt structures as soon as possible. Beyond this, it will not be possible for this Court to grant any relief to the Appellants. They cannot stall demolition of building identified as dangerous and ruinous till a deal is stuck between landlords and tenants for redevelopment of the building. It will be apposite to make a reference to the following observations of the Apex Court in *Ratilal S. Pujara Vs. Municipal Corporation of Greater Mumbai* 2022 SCC OnLine SC 1105:

26. As a consequence, the rights of the appellants in the flat owned by them in the building in question is an independent right and the demolition of the building nowhere would affect that independent right. In addition to this, the appellants have also been provided with alternate accommodation and the rights of the appellants will not be affected by virtue of demolition or evacuation in exercise of the power under Section 354 of the MMC Act. Not only the appellants, but other residents of the building will have a decent, safe and stable structure after the reconstruction of the building in question.

27. The building in question is in a ruinous condition and needs to be repaired at the earliest for the simple reason that it is unsafe for human habitation. The historic buildings in Mumbai are a reminder of the city's rich and aesthetic architectural styles. Therefore, in order to preserve the authenticity of the buildings, it is important that certain legal measures need to be taken so

that the safety and stability can be certified under Section 353B of the MMC Act, 1888.

28. Once we find that the satisfaction recorded by the Municipal Commissioner is in accordance with the due procedure prescribed by law and is not vitiated by any perversity or any illegality, there exists no ground to interfere with the impugned notices. Merely because the appellants are senior citizens, does not impel us to take any lenient view in the matter in larger public interest particularly when the private interests of the appellants have been amply safeguarded.

29. Judicial notice can be taken of various media reports reporting collapse of many old structures in Mumbai causing serious loss of human lives and limbs. By making interference of any sort in the matter at the behest of the appellants, in the existing facts and circumstances, we would not only be putting the life of the appellants and other residents of the building in jeopardy, but also hazarding the life and limb of the general public as well.

18. It is therefore in Appellants' interest that they vacate the suit structures sooner. Demolition of the structures cannot be delayed any further.

19. I therefore do not find any merit in the appeals. The appeals are accordingly dismissed with no order as to costs.

20. Since the appeals are disposed of interim applications are also disposed of.

SANDEEP V. MARNE, J.

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