

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

**APPEAL FROM ORDER NO.1068 OF 2022
WITH
INTERIM APPLICATION NO.20112 OF 2022**

Mr. Haries Michael D'souza & Ors. ...Appellants

Versus

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

...

Mr. Rajesh P. Khobragade for Appellant.

Mrs. Smita Tondwalkar, for MCGM Respondent No.1.

Mr. D. S. Sabnis i/b. Lex Firmus for Respondent No.3.

Ms. Vijayalaxmi Obhan for Respondent No.5.

...

CORAM : SANDEEP V. MARNE, J.

RESERVED ON : 15 SEPTEMBER 2023.

PRONOUNCED ON : 27 SEPTEMBER 2023.

JUDGMENT:

1. By this appeal Appellants challenge order dated 19 November 2022 passed by the City Civil Court rejecting Notice of Motion No.3114 of 2022 filed for seeking temporary injunction to restrain Respondent-Municipal Corporation from acting on Notices dated 25 July 2022 and 27 August 2022. The said Notices have been

issued in pursuance of a Notice issued by the Municipal Corporation on 04 May 2021 under provisions of Section 353B of the Mumbai Municipal Corporation Act 1888 (**Act of 1888**). After receipt of the report of the Structural Auditor in pursuance of the Notice dated 04 May 2021 submitted by the owners, Municipal Corporation issued notice dated 25 July 2022 inviting objections to the report of the structural auditor. Thereafter Notice dated 27 August 2022 was issued calling upon the occupiers to evacuate the building.

2. Appellants claim to be in occupation and possession of portion of bungalow situated at C.T.S. No.148, J. P. Road, Andheri (East) at Mumbai. The area in possession of Appellants is claimed to be 2080 sq. ft. The Appellants-Plaintiffs accordingly instituted L.C. Suit No.2246 of 2022 before the City Civil Court challenging the Notices dated 25 July 2022 and 27 August 2022. In their suit, Appellants-Plaintiffs filed Notice of Motion *inter alia* seeking a restraint order against defendants from taking any action in pursuance of the said notices. The City Civil Court, by its order dated 19 February 2022, has proceeded to dismiss the Notice of Motion No.3114 of 2022 which has led to filing of the present appeal by Appellants.

3. I have heard Mr. Khobragade, learned counsel appearing for Appellants, Ms. Tondwalkar learned counsel appearing for Municipal Corporation, Mr. Sabnis learned counsel appearing for Respondent No.3 and Ms. Obhan the learned counsel appearing for Respondent No.5.

4. As observed above, the Municipal Corporation had initially issued Notice under Section 353B of the Act of 1888 calling upon the owners and occupiers to carry out structural audit of the building and to submit structural stability certificate within 30 days of the issuance of the notice. It appears that in pursuance of the said notice dated 04 May 2021 issued under the provisions of Section 353B, the Appellants-Plaintiffs did not appoint any structural auditor nor submitted the structural stability certificate. The owners however appointed M/s. Vishwanath Joshi Consultancy-Civil and Structural Engineer to carry out structural audit of the building. The report dated 05 July 2022 was submitted by the said structural engineer categorizing building in 'C-1' category with a recommendation to evacuate and demolish the same immediately.

5. The Municipal Corporation, upon receipt of the structural audit report dated 05 July 2022, issued notice dated 25 July 2022 inviting objections to the report. Appellants-Plaintiffs submitted reply dated 29 July 2022 stating that they were in the process of appointing another structural consultant and denied the contents of Report dated 05 July 2022. However they failed to appoint any structural auditor of their own nor carried out structural audit of the building at their instance. The Municipal Corporation was therefore left with no option but to issue Notice under Section 354 of the Act of 1888 calling upon the owners and occupiers to vacate and pull down the building.

6. Thus, Municipal Corporation did not have any conflicting structural audit reports before it. It acted upon the audit report dated 05 July 2022 submitted by the owners and proceeded to issue Notice dated 27 August 2022. It is only after issuance of that Notice that Appellants-Plaintiffs appointed their own structural auditor VS Tech & Associates, who carried out inspection of the building on 30 August 2022 and prepared a report dated 15 September 2022 classifying the structure as 'C2-A' with recommendations to immediately vacate the bungalow within 1 or 2 days for carrying out repairs and to strengthen the bungalow. Appellants-Plaintiffs have placed heavy reliance on the structural audit report dated 15 September 2022 in support of contention that the structure is repairable and need not be demolished.

7. Thus, relying on the structural audit report dated 15 September 2022, the learned counsel for Petitioner has urged before me that the matter needs to be referred to Technical Advisory Committee (TAC) in the light of two conflicting reports. Reliance is placed on judgment and order dated 23 June 2014 passed by this Court in ***Municipal Corporation of Greater Mumbai Vs. State of Maharashtra & Ors.***, Writ Petition (L.) No.1135 of 2014. However, in my view Plaintiffs' reliance on the judgment of this Court would not take their case further. This Court has directed reference of the matter to TAC in the event of conflicting structural audit reports submitted by owners and occupants. In the present case however, Plaintiffs never submitted their own structural audit report in pursuance of the Notice issued under Section

353B of the Act of 1888 on 04 May 2021. The structural audit at the behest of Plaintiffs is conducted only after final Notice dated 27 August 2022 has been issued by the Corporation. Since the Corporation was not faced with conflicting reports, it cannot be faulted for placing reliance on the structural audit report submitted by the owners.

8. Even in the structural audit report dated 15 September 2022 relied upon by the Plaintiffs, the structural engineer had recommended immediate evacuation from the building within 1 or 2 days. Such is the condition of the structure. It is admitted position that half of the structure has already been demolished and the part which is in occupation of Plaintiffs is not demolished on account of non-cooperation on their part. I have seen the photographs which clearly show the demolished half portion of the bungalow. As per the report of Plaintiffs own structural engineer, the bungalow needed to be evacuated immediately. By now, period of one year has been elapsed and half of the bungalow is already demolished. In that view of the matter, structural strength of the structure must have deteriorated further on account of demolition of half portion of the bungalow. It is in the light of these peculiar facts that I am not inclined to refer matter to TAC. Firstly, there were no conflicting reports before the Municipal Corporation and secondly half of the portion of the structure has already been demolished. No fruitful purpose would be served in now referring the matter to TAC for fresh assessment of structural stability of the bungalow, half portion of which has already been demolished.

9. Considering the peculiar facts and circumstances of the case, it is difficult to hold any *prima facie* case was made out by Plaintiffs for grant of any temporary injunction in their favour. Considering the condition of structure, especially the fact that half of the structure is already demolished, it would be extremely dangerous for Plaintiffs to continue to occupy the structure. It is in the interest of the Plaintiffs that the structure is evacuated as soon as possible. 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.

10. Rights, if any, of Plaintiffs in the suit structure will not be extinguished in view of provisions of Sub Section (5) of Section 354 of the Mumbai Municipal Corporations Act, 1888. Therefore Plaintiffs need not take the risk of occupying the partly demolished bungalow.

11. I therefore do not find any merit in the appeal. The appeal is accordingly dismissed without any order as to costs.

12. Since the appeal is disposed of nothing survives in the interim application and the same is also disposed of.

SANDEEP V. MARNE, J.

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