

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO. 1130 OF 2022
WITH
INTERIM APPLICATION NO.30177 OF 2022**

Shree Ramnagar Resident Welfare Association ...Appellant
Versus
The Municipal Corporation of Greater Mumbai
and Another ...Respondents

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Mr. Manoj P. Mhatre, a/w. Mr. Amol Raut for Appellants.
Mrs. Smita Tondwalkar, for Respondent No.1-MCGM.
Mr. Ankit Lohia, a/w. Mr. Saakshat Relekar, Mr. Altamash Kapadia i/b.
 Sujit Lahoti & Associates for Respondent No.2.

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CORAM : SANDEEP V. MARNE, J.

DATE : OCTOBER 10, 2023.

ORAL ORDER:

Challenge in this appeal is to the order dated 29 November 2022 passed by the City Civil Court rejecting Notice of Motion No.2657 of 2022. In its suit, the Plaintiff has challenged Notice issued by the Municipal Corporation under section 354 of the Mumbai Municipal Corporation Act 1888. There is already a report of Technical Advisory Committee (TAC) concluding that the building is classified into 'C-1' category and that it needs to be immediately pulled down.

2. Mr. Mhatre, the learned Counsel appearing for Appellant, after taking instructions from the members of the Society, some of whom are personally present in the Court, shows willingness to vacate the premises. He would however make four requests. Firstly, he would submit that before vacating the premises, the area in their respective possession be measured by the Municipal Corporation, so as to maintain record of area in occupation of each of the occupant. Secondly, he would submit that either owner or the Municipal Corporation must maintain a record of name of the exact occupant who hands over possession of his/her respective structure. Thirdly, he would submit that proposal for issuance of Intimation of Disapproval (IOD) be directed not be processed or sanctioned by the Municipal Corporation without producing copies of Permanent Alternate Accommodation Agreements (PAAA) in respect of the occupant. Lastly, he would submit that members of the Plaintiff-Society be granted time to vacate their respective premises by 31 January 2024.

3. So far as the first aspect of measurement is concerned, Ms. Tondwalkar, the learned counsel appearing for Municipal Corporation would invite my attention to the area statement dated 23 July 2022 prepared by Municipal Corporation in which area of each premises has been indicated. It appears that the said area indicated on the basis of assessment records of the Municipal Corporation. Most of the occupants have signed the said area statement. This would take care of request made

by the learned counsel for the Petitioner.

4. So far as the second request about recording names of the occupants who handed over actual position is concerned, Guideline No. 1.09 formulated by the Municipal Corporation reads thus-

1.09) A E (B&F), before issuing notice u/s 354 to pull down dilapidated structure, shall call upon the owner to submit a statement in writing signed by owner within 7 days stating therein the names of the occupiers of the building 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 along with supporting documents. The list/statement submitted by owner shall be certified by Asstt. Commissioner. Copies of which shall be given to tenants/occupiers/owner.

If he/she fails to furnish the statement as above within the stipulated period. A.E. (B&F) & Ward Executive Engineer of the Ward shall 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 and copy shall be given to the tenants/occupiers/owners. The inspection report along with inventory report, photographs, video shooting shall be kept on record.

If approved plans are available, then area of tenants/occupants shall be certified as per approved plan; and if approved plans are not available, then existing area in occupation of tenants/occupants shall be certified. Area certified by Municipal Officer concerned will be final.

The area certified by the MCGM engineers shall not affect the inter-se rights of the owner or tenants or occupiers, including right of reoccupation in any manner.

5. As per guidelines, either the owner gives list of occupants to the Municipal Corporation or in the event failure on the part of owner to provide such a list, officials of the Municipal Corporation can make a list of names of tenants/occupiers of the building. In that view of the matter, official of the Municipal Corporation shall carry out the exercise of recording the names of occupants in the building in 2nd week of December 2023 and maintain record thereof.

6. So far as the third request about non-process of proposal for IOD without production of PAAA is concerned, this contingency does not arise as of now. Mr. Lohiya, the learned counsel appearing for Respondent No. 2 would submit that as of now there is no proposal for redevelopment of the building. As and when the Defendant No. 2 and/or its assignee/transferee decides to redevelop the building the procedure as provided under guideline No. 1.15 is bound to be followed. Guideline No. 1.15 reads thus :-

1.15) The corporation shall, while granting the sanction for redevelopment, the zonal building proposal department shall include a condition in Intimation of Disapproval that “unless and until an agreement either providing a permanent alternate accommodation in newly constructed building or a settlement is arrived at by and between the tenants and or / occupier and the landlord, no Commencement Certificate (C. C.) will be issued under section 45 of M.R. & T. P. Act 1956”.

8. This would take care of the third request made by Mr. Mhatre

about need for production of PAAA before sanctioning the proposal for issuance of IOD.

9. So far as last request of Mr Mhatre for permitting Petitioners to occupy the suit structures up to 31 January 2024 is concerned, they need to file affidavits stating that the occupation of their respective structure shall be at their own risk and that neither the landlord nor the Municipal Corporation would be held responsible for occurrence of any untoward incident. It appears that such undertakings have already been filed by the occupants before the Trial Court. The occupants would be bound by the said undertakings till they vacate their respective structures by 31 January 2024.

10. Mr. Mhare would submit that the Appellant-Plaintiff shall withdraw the suit filed before the City Civil Court.

11. Present appeal is accordingly **disposed of** by directing the members of Appellant Society are permitted to occupy the suit structures up to 31 January 2024. Municipal Corporation shall not take any coercive steps against occupants till 31 January 2024. In the event occupants fail to vacate structures by 31 January 2024, the Municipal Corporation would be at liberty to get the structures vacated and proceed with demolition without issuing any further notice.

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(SANDEEP V. MARNE, J.)