

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 3388 OF 2023
IN
WRIT PETITION NO. 3463 OF 2021

Abdul Rehman Abrar Shaik & Ors ...Applicants
In the matter between
Abrar Ahmed Salamatullah ...Petitioner
Versus
Municipal Corporation of Greater Mumbai & Ors ...Respondents

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**Mr Rakesh Kumar, with Aslam Shaikh, Akash Giri, BM Shaikh,
Tabrez Khawaja, Vikash Giri & CS Lamba, for the Applicants.**
**Mr Karl Tamboly, with Ryan Dsouza, Fatema Kachwalla, Ahsan
Allana & Hozefa Saifee, i/b J Sagar Associates, for Respondent
No. 5.**
Ms Gauri Jadhav, with Rupali Adhate, for the Respondent-MCGM.

**CORAM G.S. Patel &
Kamal Khata, JJ.**
DATED: 19th October 2023

PC:-

1. Leave to amend in terms of the Interim Application (L) No 6227 of 2023. Amendments to be carried out by Wednesday, i.e., 25th October 2023, re-verification will be required.

2. A copy of the amended Petition is to be served on all Respondents/their Advocates by 27th October 2023. Affidavits in Reply, particularly from Respondent No.5 and the Municipal Corporation of Greater Mumbai (“**MCGM**”), are to be filed and served by 3rd November 2023.

3. Mr Tamboly for Respondent No. 5 has shown some photographs of the clearly precarious condition of the building at CS No 4170 of the Bhuleshwar Division at 8 Saifi Jubilee Street in Bhendi Bazar, Mumbai. There is an open market on all sides. The Petitioners claim to be or have been fractional owners of the property. The property has been subjected, or so Mr Tamboly for Respondent No. 5 says, to a compulsory acquisition. An amount of approximately Rs. 14 crores is deposited for the entire property and a share is available for withdrawal by the Petitioners towards compensation in acquisition for their fractional share, right, title and interest in the building.

4. Mr Tamboly expresses the concern that given the condition of the building, which according to him has received repeated take-down notices from 2014 onwards, it should not be that the trustees of the 5th Respondent, now that they are 100% owners, should be held liable. The only reason the building has not been brought down is because of the obstruction by the Petitioners.

5. There may be some substance to this contention. Whether the Petitioners are or are not in occupation of the building is immaterial. It is they who have opposed the bringing down of the

building. It cannot be that this opposition comes without a corresponding responsibility or liability. If the building has not, despite repeated MCGM notices, been brought down, and it is now clearly in a dangerous condition, the Petitioners will continue to be liable for any untoward incident or any possible loss of life or property including liability to third parties and not the 5th Respondent or its trustees. We say this because by the amendment, there are now attempts made to challenge Section 354 notices under the Mumbai Municipal Corporation Act 1888 that go back in time nearly 10 years to 2014. That is surely unthinkable. Even if those notices were not acted upon, it is very difficult to contemplate a situation where, at an interim stage, a Section 354 notice can be brought into question nearly 10 years after it was first issued. The amendment is permitted subject to these observations and directions.

(Kamal Khata, J)

(G. S. Patel, J)