

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Appeal from Order No.331 of 2024
With
Interim Application No.7947 of 2024
In
Appeal from Order No.331 of 2024

1. Nazre Alam Abul Bayan
Age – 40 Years
Flat No.A/1 – 101, 123/ Vidya
Nagari Colony, Santacruz (East),
Mumbai – 400 098.
2. Ali Asgar Khokhawala (Deceased)
Through its Legal Heir Adil Ali
Asgar Khokhawala, Age – 75 Years
Flat No.A/1 – 202, 123/ Vidya
Nagari Colony, Santacruz (East),
Mumbai – 400 098.
3. Saifuddin Abbas Nalwala
Age – 62 Years
Flat No.A/1 – 401, 123/ Vidya
Nagari Colony, Santacruz (East),
Mumbai – 400 098.
4. Anuradha Venkatesh Prabhu
Age – 72 Years
Flat No.A/1 – 402, 123/ Vidya
Nagari Colony, Santacruz (East),
Mumbai – 400 098.
5. Shakuntala Kutty Shetty
Age: 75 Years
Flat No.A/1 – 02, 123/ Vidya
Nagari Colony, Santacruz (East),
Mumbai – 400 098.
6. Sakina Mohammed Sagir Shaikh
Age – 72 Years

- Flat No.A/2 – 004, 123/ Vidya
Nagari Colony, Santacruz (East),
Mumbai – 400 098.
7. Zubeda Wife of Wahab Sayed
Age – 68 Years
Flat No.A/2 – 104, 123/ Vidya
Nagari Colony, Santacruz (East),
Mumbai – 400 098.
8. Sayed Ansar Husain Iqbal Husain
Age – 75 Years
Flat No.A/2 – 204, 123/ Vidya
Nagari Colony, Santacruz (East),
Mumbai – 400 098.
9. Shama Hasan Shaikh (Deceased)
Through its Legal Heir Navid
Hassan Shaikh, Age – 74 Years
Flat No.A/2 – 303, 123/ Vidya
Nagari Colony, Santacruz (East),
Mumbai – 400 098.
10. Haseena Begum Abul Bayan
Age – 63 Years
Flat No.A/3 – 006, 123/ Vidya
Nagari Colony, Santacruz (East),
Mumbai – 400 098.
11. Shahnawaz Alam Abul Bayan Khan
Age – 29 Years
Flat No.A/3 – 108, 123/ Vidya
Nagari Colony, Santacruz (East),
Mumbai – 400 098.
12. Abul Bayan Abul Hasan Khan
Age – 67 Years
Flat No.A/3 – 207, 123/ Vidya
Nagari Colony, Santacruz (East),
Mumbai – 400 098.
13. Farida Abdul Kumandan

Age – 71 Years
Flat No.B/1 – 401, 123/ Vidya
Nagari Colony, Santacruz (East),
Mumbai – 400 098.

14. Khalil Mohamed & Gulzar Khan
Age – 74 Years
Flat No.B/1 – 404, 123/ Vidya
Nagari Colony, Santacruz (East),
Mumbai – 400 098.
15. Farooque & Abdul Noor Khan
Age – 41 Years
Flat No.B/1 – 603, 123/ Vidya
Nagari Colony, Santacruz (East),
Mumbai – 400 098.
16. Mohammed Farooque Shaikh
Age – 52 Years
Flat No.B/1 – 604, 123/ Vidya
Nagari Colony, Santacruz (East),
Mumbai – 400 098.
17. Abdul Aziz Shaikh
Age – 77 Years
Flat No.B/1 – 701, 123/ Vidya
Nagari Colony, Santacruz (East),
Mumbai – 400 098.
18. Shahjahan Shakeel Khan
Age – 62 Years
Flat No.B/2 – 405, 123/ Vidya
Nagari Colony, Santacruz (East),
Mumbai – 400 098.
19. Tajammul Hussain Mohammed
Khalil Khan
Age – 51 Years
Flat No.B/2 – 306, 123/ Vidya
Nagari Colony, Santacruz (East),
Mumbai – 400 098.

20. Fahim Rashid Khan
Age – 51 Years
Flat No.B/2 – 606, 123/ Vidya
Nagari Colony, Santacruz (East),
Mumbai – 400 098.
21. Mehmood Mukhtar Ahmed
Age – 54 Years
Flat No.B/2 – 607, 123/ Vidya
Nagari Colony, Santacruz (East),
Mumbai – 400 098.
22. Fazal Mehmood
Age – 67 Years
Flat No.B/2 – 707, 123/ Vidya
Nagari Colony, Santacruz (East),
Mumbai – 400 098.
23. Hamid Mehmood Ghulam Sarwar
Age – 62 Years
Flat No.C/1 – 06, 123/ Vidya
Nagari Colony, Santacruz (East),
Mumbai – 400 098.

...Appellants/
Orig. Plaintiffs

versus

1. Municipal Corporation of Greater
Mumbai, Through its Municipal
Commissioner, MCGM Head Office,
Mahapalika Marg, Mumbai CST,
Mumbai – 400 001.
2. The Designated Officer, Office
of Assistant Commissioner,
H/East Ward, 137, TPS-V,
2nd Road, Prabhat Colony,
Santacruz [East],
Mumbai – 400 055.
3. Kailash Prabhat Co-operative
Housing Society Ltd.

Through its Secretary/ Chairman,
[Co-operative Housing Society
bearing Registration No.HSG/
BOM/970 of 1965 under the
provisions of Maharashtra
Co-operative Societies Act, 1960]
123/ Vidya Nagari Colony,
Santacruz (East),
Mumbai – 400 098.

4. Technical Advisory Committee
Through its Chairman
Office of Deputy Chief Engineer
(Building Proposal)
WS 1, Balasheb Thakrey Mandi,
7th floor, Poonam Nagar,
Opposite JVLR, Jogeshwari East,
Mumbai: 400 093.

... Respondents/
Orig. Defendants

Mr Girish Godbole, Senior Advocate, along with Mr Rajesh Kanojiya, Mr Rohan Surve, Mr Ravikant Purohit, and Ms Triputi Gaikar, i/by Pragma Mishra, for appellants.

Ms Smita Tondwalkar, for respondents No.1, 2 and 4/ MCGM.

Mr Ashish Kamath, Senior Advocate, along with Mr Kunal Mehta i/by SN Juris, for respondent No.3.

Coram: R. N. Laddha, J.

Date: 8 May 2024

P.C. :-

The appellants assert their membership in respondent No.3 society and their occupation of certain flats within respondent No.3's buildings. The society comprises three wings designated as A, B and C (collectively referred to as the 'suit property'). In 2021, the respondent corporation called upon the owner/ occupier to submit a structural stability

report for the suit property. Subsequently, respondent No.3, through M/s Kapadia & Kapadia, conducted inspections on 8 and 9 December 2022, classifying the suit property as ‘C-1’ and necessitating demolition. Later, on 12 March 2022, certain members of respondent No.3 conducted a structural audit of the suit property through M/s Orchid Consultants. Additionally, due to the adjacent Metro line work, the MMRDA commissioned a structural audit report through Veermata Jijabai Technological Institute (‘VJTI’) on 30 March 2023 and 20 April 2023 for wings A and B of the suit property. In separate reports, both auditors classified the audited structures as ‘C2-B’, indicating that evacuation was unnecessary but major repairs were needed.

2. In the midst of conflicting reports, the matter was brought before the Technical Advisory Committee (for short, ‘TAC’) on 10 April 2023. A meeting was held on 27 April 2023 with all the structural consultants in attendance. Following thorough deliberation, the TAC appointed the Indian Institute of Technology Bombay (‘IIT’) as the third-party structural auditor for the suit property on 10 May 2023. Acting independently, the IIT inspected the suit property on 8 August 2023 and categorised it as ‘C-1’, necessitating

demolition. After that, TAC meetings took place on 1 November 2023 and 15 December 2023 with representatives from VJTI, IIT, M/s Kapadia & Kapadia, and M/s Orchid Consultants. After considering all reports and hearing the parties, the TAC officially classified the suit property as ‘C-1’ in its report dated 16 April 2024.

3. Dissatisfied with this, the appellants, *inter alia*, challenged the notices issued by the respondent corporation and the TAC report dated 16 April 2024 in L.C. Suit No.1555 of 2023 before the City Civil Court, Mumbai, wherein they also filed a notice of motion under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908. However, the trial Court, by the impugned order, rejected the appellants’ prayer for interim relief. Aggrieved thereby, the appellants have now approached this Court by filing the present Appeal from Order.

4. I have heard Mr Girish Godbole, the learned Senior Counsel representing the appellants; Ms Smita Tondwalkar, the learned Counsel representing the respondent corporation; Mr Ashish Kamath, the learned Counsel representing respondent No.3; and perused the material placed on record.

5. Mr Girish Godbole, the learned Senior Counsel, appearing on behalf of the appellants, submits that the TAC report contains flaws. Specifically, it lacks reasons for rejecting alternative reports while accepting the report from the IIT. Additionally, the TAC report failed to record any findings from the visual inspection. The learned Senior Counsel further contends that Respondent No.3's decision to redevelop the suit property under Regulation No.33(7)(B) of the DCPR, 2034, implicitly acknowledges that the suit property is not in a dilapidated state.

6. Furthermore, the learned Senior Counsel submits that the trial Court should have taken into account the favourable results obtained from the rebound hammer test, which assessed the stability of the suit property, and without considering these crucial aspects, the trial Court denied interim relief. To support these arguments, the learned Senior Counsel cites the judgment in the case of *Hind Rubber Industries Pvt. Ltd. Vs State of Maharashtra*¹.

7. Ms Smita Tondwalkar, the learned Counsel appearing on behalf of the respondent corporation, supports the line of reasoning adopted by the trial Court and submits that the

1 2022 SCC OnLine Bom 1640

structure is dilapidated, and the body of experts, the TAC, has rightly classified it as ‘C-1’ after considering all the reports and hearing the parties.

8. Mr Ashish Kamath, the learned Senior Counsel, representing respondent No.3, submits that there are no flaws in the TAC’s findings or the impugned order. After considering the conflicting reports, the TAC appropriately appointed an independent auditor to conduct a structural audit. During TAC meetings, all relevant reports were thoroughly considered in the presence of representatives from concerned parties, resulting in the classification of the suit property as ‘C-1’. The TAC’s decision is deemed final and binding for all parties involved. Notably, most of the members have already vacated their premises, except the appellants, who are minuscule in number. The appellants’ use of dilatory tactics, including filing the suit and the present appeal, has further delayed the redevelopment process. The learned Senior Counsel relied on: *(i) Vivek Shantaram Kokate Vs MCGM²; and (ii) Farzin Ardeshir Adel and Ors. Vs MCGM and Ors³.*

9. This Court has given anxious consideration to the rival

2 2019 SCC OnLine Bom 1613

3 Writ Petition No (L) No.13705 of 2022 dated 11 August 2022 (Bombay)

contentions and examined the record with reference to the applicable law.

10. Upon perusing the material placed on record, particularly the TAC's order dated 10 May 2023, it is evident that the TAC conducted an inspection of the site on 27 April 2023. Subsequently, a meeting was held, attended by the structural consultants representing the parties. After deliberating on the TAC's site visit findings and considering the conflicting reports and tests carried out by each structural auditor, the TAC decided to appoint the IIT as an independent structural consultant. The appellants, dissatisfied with the TAC's decision, approached the trial Court, claiming that there was no need for a third-party consultant since VJTI's report was already a part of the record. However, by an order dated 20 July 2023, the trial Court declined to grant *ad-interim* relief. Unsatisfied, the appellants filed an Appeal from Order, bearing No.736 of 2023, before this Court. On 8 September 2023, this Court disposed of the appeal in the following terms:

“5. As observed earlier the only reason for the Appellants to oppose further inspection of the building, through IIT is report submitted by the VJTI at the instance of the MMRDA. In my view, since TAC has been directed by the City Civil Court by its order dated 20 March 2023 to

consider the contrary reports and give its opinion, TAC is entitled to appoint its own structural auditor. This would in fact give a clear picture to the TAC after considering four reports namely, report submitted by Appellants, Society, VJTI as well as IIT.

6. In that view of the matter, the present Appeal is disposed of by directing TAC to take into consideration the report of VJTI also while making its recommendations based on the two contrary reports as well as the report that would be submitted by IIT. The learned Counsel for the Appellants makes a statement that the Appellants shall not create any obstruction to the team of Structural Engineers nominated by TAC who are carrying out the inspection of the suit building. With the above directions, I dispose of the Appeal.”

11. On 9 August 2023, the IIT inspected the suit property and performed mandatory tests except for the core test, concrete chemical test, and cement aggregate ratio assessment. The IIT report highlighted significant distress in all three wings. The columns, beams, and slabs were in poor condition and damaged due to ageing, seepage, leakage, and corrosion. Concrete spalling and cracks were evident at various locations. Certain areas showed signs of vegetation and rapid deterioration. Notably, the stairwell, plinth protection, and lift walls were also damaged. Additionally, ponding was observed in the lift well of wing B. Based on these findings, the IIT categorised the suit property as ‘C-1’.

12. After submitting the report on 1 September 2023, a TAC meeting was initially scheduled for 18 October 2023. However, it was later rescheduled to 1 November 2023. During this meeting, all structural consultants and some members of respondent No.3 were present. At the hearing, respondent No.3's some members raised objections to the IIT report, which are reproduced below:

- “a) IIT has not conducted chemical test, cover test, core test although VJTI and Orchid consultants have conducted all tests.*
- b) Proforma B of the said report is incomplete.*
- c) IIT Report indicate that rebound hammer test results are showing concrete is of fair quality.*
- d) In IIT report under heading discussion of NDT results mentioned that except for the areas where repairs have happened the carbonation depth is very high as such we are ready to repair the buildings.*
- e) In IIT report photographs shown are not matching with the physical site positions.*
- f) Photograph submitted are manipulated.”*

13. In response, the TAC requested the IIT to provide a point-wise response to refute these objections. Accordingly, the IIT submitted its reply on 23 November 2023, explaining the reasons for not conducting certain specific tests and clarifying its stance on the rebound hammer test. The response of IIT is reproduced below:

- “a) Chemical test:*

Chloride test: This test is carried out to understand the likelihood of corrosion in a reinforced concrete element. The rebars in the buildings are already severely corroded, sometimes up to 50%. Hence, finding the chances of corrosion at this stage is redundant.

Cement to aggregate and Sulphate test: These tests required knowledge of the amount of calcium oxide present in the cement used. Since the oxide composition of the cement used in the concrete is not available hence this test cannot be accurately conducted.

Cover: There is widespread spalling of cover concrete in the buildings. The cover thickness can be seen by the naked eye and hence an electromagnetic tool is not required for the same.

Core cutting test: As per the IS 456:2000, the minimum grade of concrete in an environment like Mumbai should be M30. The time when the building was constructed, such a grade was not possible. Hence, conducting a core test is not relevant.

b) The required matters for proforma B have been provided

c) The quality of the concrete evaluated by rebound hammer gets over estimated due to the high carbonation that has happened in the concrete.

d) the carbonation depth in the external columns where concrete jacketing has been carried out was low. Currently, these structural elements also show distress in the form of corrosion cracks.

e) Figure 3.11 is in continuation of the images of terrace (figure 3.10), facade (3.11) and interiors (figure 3.12) of building C, as the previous patterns of Building A and Building B it shall be correctly read as “Figure 3.11. Photographs showing the condition of the facade of Building C in the Kailash Parbhat CHS Ltd. situated at 173, Vidyanagari marg, CTS Road, Kalina, Mumbai

400098”.

f) The intent of the photographs is to show the over all condition of the buildings, which are in a highly distressed state. None of the photos are manipulated. The intent of the concluding remarks is cleared that buildings should be considered in the C-1 category.”

14. Once again, another meeting took place on 15 December 2023 with the participation of structural consultants and some members of respondent No.3. During this meeting, the IIT addressed both the objections raised by the members of respondent No.3 and the queries posed by the TAC. After another thorough discussion and careful consideration of all structural audit reports, the TAC classified the suit property as ‘C-1’.

15. Upon reviewing the guidelines regarding the classification of private and Municipal buildings as ‘C-1’, specifically Guideline No.1.05, it becomes evident that the respondent corporation has a duty to refer conflicting structural audit reports to the TAC. In such cases, the TAC is required to hold a meeting and provide an opportunity for the concerned structural consultants to present their views before making a final decision. The TAC’s decision is considered binding on all parties.

16. The TAC comprises of experts and the Court lacks the specialised expertise necessary to review decisions rendered by such a specialised body. The Court's ability to interfere with the TAC's decisions is limited and stringent. The Court cannot dismiss the TAC's conclusion without first satisfying itself on the following grounds: (i) the TAC committed a procedural irregularity or violated principles of natural justice, (ii) the decision was made without due consideration of relevant evidence, and (iii) the decision is so unreasonable that no prudent person would arrive at such a conclusion. These aspects are highlighted in the cases of *Andheri Purab Paschim Cooperative Housing Society Ltd. Vs MCGM*⁴ and *Mansukhlal Narottamdas Kothari & Ors. Vs The Commissioner, MCGM & Ors*⁵.

17. Considering the above, this Court finds it difficult to appreciate the contentions of the learned Senior Counsel for the appellants. Admittedly, the report of VJTI inspected only Wings A and B and left out Wing C. Initially, the TAC reviewed reports from all consultants and deemed it necessary to seek an additional opinion by appointing a third-party consultant, which led to the involvement of the IIT. The IIT's

4 (2023) 5 Bom CR 515

5 Appeal from Order No.780 of 2022 dated 25 April 2023.

report was presented to the TAC, and the appellants raised objections. Subsequently, a separate meeting was convened to address these objections and queries of the TAC itself. Throughout various TAC meetings, all parties were afforded ample opportunities to present their submissions. Discussions occurred among the TAC members and attendees. While some members of respondent No. 3 raised several objections, the TAC also posed queries that the IIT addressed. After thorough consideration, the TAC ultimately decided to accept the IIT's report. The mere existence of a report from VJTI does not automatically disqualify the TAC from considering the report from IIT. There is nothing on record to *prima facie* suggest that the TAC's decision is flawed without considering the available records. On the contrary, the TAC's report indicates that proper procedures were followed, including consideration of all reports, addressing objections and queries and thorough discussions. Given the criteria for judicial intervention in TAC's report, interference is unwarranted in the present case.

18. That apart, it is undisputed that the appellants are minority members of respondent No.3, and the suit property is under redevelopment. It is a settled position in law that the

redevelopment process cannot be halted based on objections from minority tenants. A profitable reference in this regard can be made to the decisions of the Division Bench of this Court in *Rajeevan T.V. Vs State of Maharashtra*⁶, *Hind Rubber Industries (P) Ltd. Vs State of Maharashtra*⁷, and *Estella Fernandes Nee Estella Fernandes Vs Swarna Highrise Constructions*⁸.

19. Furthermore, in *Vivek Shantaram Kokate (supra)*, the Division Bench of this Court observed as follows:

“21. We have said this before, and we will say it again, and yet again, as often as we must : this Court will always err on the side of caution. For human lives matters. Buildings can be reconstructed. A life lost is lost forever. The alternative is unimaginable: ‘the building was not demolished because of a stay granted by the Court. The building collapsed. People died. Therefore, people died because the Court granted a stay.’ This is the conclusion devoutly to be avoided. A built structure is, in many ways, like the human body. Both require routine care and maintenance, and early intervention when serious problems are detected. Without this, both fail. To say then, as Mr. Murthy says today, ‘that the building can be repaired’ is very like saying a life can be artificially prolonged for a little while. Whether or not to keep a life going may pose an ethical, legal or moral dilemma. A building presents no such challenge. On the contrary, it is

6. (2023) 4 Bom CR 145

7. (2023) 1 Bom CR 342

8. (2023) 4 Bom CR 632

the lives in the building that are our paramount, primary, and, perhaps, only concern. It is for this reason that we insist that unless there is a prima facie finding there cannot be an order of injunction in such matters; and in no case can such an injunction be rendered weak-kneed by tacking onto it a wholly unenforceable and redundant 'undertaking'. That undertaking, as we said elsewhere, is useless as soon as the undertaker meets his maker. There can also be no generalized order of status quo without knowing what that status quo is, because in matters such as these, that would inevitably involve an injunction against the annual monsoons. We have also noticed, in more than one case, that while these status quo orders were pending — and for precisely this reason, i.e. weathering — some portions of such judicially protected structures (some on busy roads near stations) actually collapsed.”

20. In light of the preceding discussion, this Court does not find any error in the impugned order, declining to grant interim relief in favour of the appellants. Consequently, the present Appeal from Order is dismissed. As a sequel, the pending application also stands disposed of.

[R. N. Laddha, J.]