

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

Appeal from Order No.810 of 2023

1. Babulal Anraj Shah
Aged 68 years, Adult, Indian
Inhabitant of Mumbai, having
address at Shop No.4 and
Room No.8, Ground Floor,
Mayura Complex, M.G.Road,
Ghatkopar West, Mumbai-400 086.

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2. Kishor Tejraj Shah
Aged 60 years, Adult, Indian
Inhabitant of Mumbai, having
address at Shop No.6, Ground Floor,
Mayura Complex, M.G.Road,
Ghatkopar West, Mumbai-400 086.

3. Rakesh Karunashankar Agnihotri
Aged 54 years, Adult, Indian
Inhabitant of Mumbai, having
address at Shop No.6, Ground Floor,
Mayura Complex, M.G.Road,
Ghatkopar West, Mumbai-400 086. ...

Appellants.

Vs.

1) Municipal Corporation of
Greater Mumbai, a statutory Corporation
incorporated in accordance with the provisions
of Bombay Municipal Corporation Act,
1888 and having its offices at
Mahapalika Bhavan, Mahapalika
Marg, Fort, Mumbai-400 001.

2) Assistant Engineer (Buildings
& Factory)-III

'N' Ward, 5th Floor, Bombay Municipal
Corporation, Jawahar road, Ghatkopar
(East), Mumbai-400 077.

3) Mr Vindokumar Takhatmalji
Kachhara @ Jain

1st Floor, Mayura Complex (Old
Ram Niwas) Khot Lane, M.G.Road,
Ghatkopar (W), Mumbai-400086

4) Hastimal Takhatmalji Kachhara @ Jain

1st Floor, Mayura Complex (Old
Ram Niwas) Khot Lane, M.G.Road,
Ghatkopar (W), Mumbai-400086

5) Sushiladevi Hastimal Kachhara @ Jain

1st Floor, Mayura Complex (Old
Ram Niwas) Khot Lane, M.G.Road,
Ghatkopar (W), Mumbai-400086

6) Rajesh Hastimal Kachhara @ Jain

1st Floor, Mayura Complex (Old
Ram Niwas) Khot Lane, M.G.Road,
Ghatkopar (W), Mumbai-400086

... Respondents.

a/w

Interim Application No.860 of 2024

1. Keerti Roshanlal Dhiliwal

2. Ashok Kumar Kishanlal Ranka

... Applicants/
Interveners.

In the matter between:

1. Babulal Aniraj Shah & Ors.

... Appellants.

Vs.

MCGM & Anr.

... Respondents.

a/w

Interim Application No.1163 of 2024

Babulal Aniraj Shah	...	Applicant.
<u>In the matter between:</u>		
Babulal Aniraj Shah & Anr.	...	Appellants.
Vs.		
MCGM & Ors.	...	Respondents.

a/w

Interim Application No.15776 of 2023

Babulal Aniraj Shah & Ors.	...	Applicants.
Vs.		
MCGM & Ors.	...	Respondents.

Mr Ashok M. Saraogi i/by Sahil Ansari, for the appellants.
Ms Smita V. Tondwalkar for respondents No.1 and 2/BMC.
Mr Sidhha Pamecha with Mr Bharat Jain i/by Darshan B. Jain, for respondents No.3 to 6.
Mr Aditya Shiralkar with Mr Satish Desai i/by Mehrotra & Associates, for the applicant/ intervenor in IA-860-2024.

Coram: R. N. Laddha, J.

Date : 26 February 2024.

P.C. :-

By the present Appeal from Order, the appellants (original plaintiffs) have assailed the order dated 20 November 2023 passed in Notice of Motion No.2652 of 2023 in L.C. Suit No.1555 of 2023. By the impugned order, the learned City Civil Court, Mumbai, declined to grant *ad-interim* relief in favour of the appellants.

2. The appellants claim that they are tenants and occupants of certain units within the suit structure, i.e., Mayura Complex located in Ghatkopar West, Mumbai. It is undisputed that the suit structure is owned by respondents No.3 to 6. As the suit structure aged beyond 30 years, on 16 September 2017, the respondent corporation called upon the owner/ occupier to submit a structural stability report. Respondents No.3 to 6 inspected the suit structure on 2 December 2017 and classified it as 'C-1', necessitating demolition. After that, the respondent corporation issued a demolition notice. On 12 April 2018, the appellants inspected the suit structure and categorised it as 'C-3', indicating that evacuation was not necessary but minor repairs were needed.

3. Amidst the conflicting reports, the matter was referred to the Technical Advisory Committee (for short, 'TAC'). A meeting was convened on 22 January 2019. After thorough deliberation, the TAC formerly classified the building suit structure as 'C-2A' through a comprehensive order passed on 6 March 2019. The appellants were directed to undertake necessary repairs within a six-month period, adhering to the recommendations put forth by their consultant.

4. The appellants assert that the repairs were delayed due to the arrival of the monsoon and the impact of the COVID-19

pandemic. On 24 August 2021, the appellants' consultant submitted a certificate dated 19 August 2021 confirming the completion and structural stability of the building. This certificate stated that the structure was secure and suitable for rehabilitation.

5. The disagreement arose promptly on 14 October 2022, when the appellants received a notice from the respondent corporation. The notice invited objections to a report submitted by respondents No.3 to 6, which classified the suit structure as '*C-1*'. Subsequently, on 20 February 2023, the appellants, represented by M/s. Tech Restrength Consulting Civil Engineers (for short, 'Tech Restrength'), submitted a structural audit report dated 25 December 2022. According to this report, the suit structure fell under the category '*C-2B*', requiring structural repairs but not eviction. Following this, on 8 June 2023, a TAC meeting was convened in the presence of the parties' representatives.

6. According to a report dated 14 June 2023, the TAC classified the structure in question as '*C-1*'. Subsequently, the respondent corporation issued a demolition notice on 30 June 2023 under section 354 of the Mumbai Municipal Corporation Act, 1888 (for short, 'the Act'). Dissatisfied with this, the appellants challenged both, the report and the notice by filing L.C. Suit No.1555 of 2023 and moving a notice of motion under Order 39 Rules 1 and 2 of

the Code of Civil Procedure, 1908. However, the trial court, by the impugned order, rejected the appellants' prayer for *ad-interim* relief. As a result, the aggrieved appellants have now approached this Court.

7. I have heard Mr Ashok Saraogi, the learned Counsel representing the appellants; Ms Smita Tondwalkar, the learned Counsel representing the respondent corporation; Mr Siddha Pamecha, the learned Counsel representing respondents No.3 to 6; and Mr Aditya Shiralkar, the learned Counsel representing the Intervenor; and perused the material placed on record.

8. Mr Ashok Saraogi, the learned Counsel, appearing on behalf of the appellants, submits that the cause of action for the report and the demolition notice is *void ab initio*. This is because it originated from a time-barred structural audit report issued by respondents No.3 to 6 on 24 December 2020, which was valid for only six months and expired on 24 June 2021.

9. The learned Counsel argues that the respondent corporation has violated the principles of natural justice on two counts. Firstly, by giving notice to the appellants about the TAC meeting scheduled on 8 June 2023 in the late evening of 7 June 2024. Secondly, the appellants had no occasion to counter the report

dated 22 May 2023, relied upon by respondents No.3 to 6, as it was provided to them after the TAC meeting.

10. The learned Counsel contends that the TAC erroneously labelled the suit structure as 'C-1'. This categorisation was based on the observation that no repairs had been undertaken by the appellants. However, the appellants did complete the repair work and subsequently submitted a structural stability certificate on 24 August 2021. Despite the TAC noting the deterioration of the first floor and the good condition of the ground floor units, it still classified the structure as 'C-1' due to its age.

11. According to Mr Saraogi, the site observations recorded in the TAC report dated 14 June 2023 pertain to the first floor. He submits that the first floor is occupied by respondents No.3 to 6. He contends that the acts of respondents No.3 to 6, not only to repair and maintain the first floor but also to deny the appellants' access to do so, demonstrate their *malafide* intention to oust the tenants, in connivance with the respondent corporation, to subdue the appellants' tenancy rights. Furthermore, he asserts that the appellants have no objection to the redevelopment of the suit structure, although respondents No.3 to 6 have no intention of doing so. He submits that, in 2009, permissions were obtained by respondents No.3 to 6 for the redevelopment of the suit structure.

However, they lapsed due to quarrels with the adjoining plot holder.

12. Ms Smita Tondwalkar, the learned Counsel appearing on behalf of the respondent corporation, submits that the learned trial Court has rightly refused to grant *ad-interim* relief in favour of the appellants. She supports the line of reasoning adopted by the learned trial Court. She submits that the structure is dilapidated, and the TAC has rightly classified it as 'C-1'.

13. Mr Siddha Pamecha, the learned Counsel appearing on behalf of respondents No.3 to 6, submits that there is no infirmity in the findings of the TAC and the impugned order. The TAC duly granted the appellants an opportunity of hearing and, after considering both reports, rightly classified the suit structure as 'C-1'. He states that the TAC's decision is final and binding on the parties. He submits that respondents No.3 to 6 intend to redevelop the suit structure. After the handing over of the reserved road widening area to the respondent corporation and the approval of plans, the tenants will be provided with alternate accommodation. He further submits that by filing the suit and impleading these respondents only in the Appeal by order of this Court, the appellants have adopted dilatory tactics to stall the redevelopment.

14. Mr Aditya Shiralkar, the learned Counsel appearing on behalf of the Intervenor in Interim Application No.860 of 2024, submits that these intervenors are tenants and occupants of some units within the suit structure. Among the 19 tenants/occupiers of this structure, the appellants stand out as the sole group challenging the TAC report and the demolition notice. Notably, the suit structure itself boasts a remarkable age of over 60 years. Due to its severe deterioration, a portion of the structure (specifically, shop No.9) has already been demolished. Interestingly, while majority tenants have embraced the redevelopment proposal put forth by respondents No.3 to 6, the appellants have obstructed the redevelopment process by initiating frivolous legal proceedings, raising suspicions about their true intentions. The learned Counsel relied on (1) *Mansukhlal Narottamdas Kothari & Ors. Vs The Commissioner, MCGM & Ors*¹; (2) *Adarsh Dahisar Gaurav Co-op. Housing Society Ltd., Mumbai Vs Designated Officer, Asst.Engineer, MCGM (B & F) (R/North Ward), Mumbai & Ors.*²; (3) *Shubhas Jain Vs Rajeshwari Shivam & Ors.*³; and (4) *Ramnarayan Nathuprasad Pande & Ors. Vs MCGM & Ors.*⁴

15. This Court has given anxious consideration to the rival contentions and examined the record with reference to the

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

2 2022 (1) Mh.L.J. 56

3 (2021) 20 SCC 454.

4 2019 SCC OnLine Bom 1622.

applicable law.

16. A bare perusal of Guideline No.1.05 from the respondent corporation's guidelines regarding the classification of private and Municipal buildings as 'C-1' (for short, 'TAC Guidelines'), it becomes evident that when the respondent corporation receives conflicting structural audit reports regarding a building status, the matter is referred to the concerned TAC. The TAC is required to provide a hearing to the concerned structural consultants during their meeting. Guideline No.1.08 outlines the process for issuing a notice under section 354 of the Act to demolish a structure within seven days. Additionally, Guideline No.3 empowers the respondent corporation, subject to prior approval from the Zonal Dy. Municipal Commissioner, to bypass the formal process of declaring a building as 'C-1' and evacuate all occupants if the building or its part is in imminent danger and highly distressed. The TAC's decision is deemed final and binding.

17. The TAC consists of experts, and the Court lacks the necessary expertise to review the findings made by such a specialised body. The Court's ability to interfere with the TAC's decision is limited and stringent. To intervene, it must be demonstrated that:— (i) the TAC committed a procedural irregularity or violated the principles of natural justice, (ii) the

decision was rendered without due consideration of relevant evidence, and (iii) the decision is so unreasonable that no reasonable person would arrive at such a conclusion. The Court cannot disregard the TAC's recommendations without satisfying these criteria. All these aspects are highlighted in ***Andheri Purab Paschim Cooperative Housing Society Ltd. Vs MCGM⁵ and Mansukhlal Narottamdas Kothari (supra)***.

18. Referring to the available information, on 7 June 2023, the respondent corporation notified the appellants and respondents No.3 to 6, along with their consultants, about an upcoming visit and the TAC meeting scheduled for 8 June 2023. Pursuant to this intimation, Ubed Jatu, the project manager of respondent No.3 to 6's consultant, Retro Fitters Consulting Engineers (for short, Retro Fitters'), and Rakesh Salgaonkar, the project engineer from Tech Restrength, participated in the site inspection and attended the TAC meeting. As recorded in the TAC report, both individuals presented their submissions supporting their respective reports. After careful consideration of their submissions and the available reports, the TAC classified the structure under scrutiny as 'C-1'. Given the above, this Court does not *prima facie* find any procedural irregularity or violations of natural justice principles.

5 (2023) 5 Bom CR 515

19. In the earlier round of TAC proceedings, the TAC categorised the building as 'C-2A'. According to the TAC Guidelines, this category refers to structures that are partially unsafe or dangerous and require major structural repairs, including partial evacuation of the hazardous part of the building. Following the TAC's recommendations in 2019, the appellants completed the necessary repairs by August 2021. However, a considerable time has elapsed since then. Through Tech Restrength, the appellants inspected the suit structure for a structural audit on 25 November 2022 and prepared a report on 25 December 2022. This report, however, remained valid only for six months.

20. The external observations in this report indicate that certain sections of the building structure exhibit separation due to external cracks. Additionally, the external plaster displays a moderate pattern of cracks, likely caused by the infiltration of rainwater, air, and salinity. Internally, the masonry walls are infested with white ants, likely to seepage from the roof. The report also recorded damage to the front side common wooden passage and the Mangalore roof shade.

21. Furthermore, during the internal assessment of the first-floor units, it was discovered that the internal walls were also infested with white ants due to the damaged roof, and certain wooden

battens were decaying. The visual inspection of the ground floor units demonstrated that these units were in moderate condition, as the walls were covered with plywood and laminates, and the loft ceiling was concealed by a false ceiling. The ultrasonic pulse velocity test conducted on the ground floor rooms revealed questionable concrete quality. In summary, based on visual observations, severe external seepage at specific locations had adversely impacted the building's functionality and served as a sign of deterioration.

22. Respondents No.3 to 6 through Retro Fitters conducted a structural audit of the suit structure on 24 December 2020 and 8 May 2023. The report for the inspection carried out on 8 May 2023 was prepared on 22 May 2023. Both reports of 2020 and 2023 classified the suit structure as 'C-1'. During the TAC hearing on 8 June 2023, the reports submitted by both consultants were discussed, and the TAC scrutinised a comparative statement. At the request of both consultants, the TAC unanimously decided to consider the latest structural audit reports. Consequently, Retro Fitters formally requested the respondent corporation, through a letter dated 9 June 2023, to accept the 22 May 2023 report as the most recent assessment. Additionally, Tech Restrength, in a separate letter also dated 9 June 2023, informed the respondent corporation about extending the validity of its report dated 25 December 2022

for an additional two months.

23. The contentions put forth by the learned Counsel for the appellants claiming their inability to challenge the Retro Fitters' May 2023 report due to its post meeting submissions, lacks merit. During the meeting, their representative unanimously agreed to proceed with the latest reports. Furthermore, both parties' consultants corresponded with the respondent corporation after the meeting. The appellants cannot now take benefit of their own actions to question the TAC's decision. Given the above, the TAC appears to have thoroughly considered all relevant material, rendering its decision reasonable.

24. In paragraph 10 of the plaint, the appellants aver that they have no objection to demolishing the first floor of the suit structure. In paragraph 9, they have undertaken to occupy the suit premises at their own risk. The appellants' demand cannot be accepted to put not just the owner of the structure but also other tenants at a disadvantage. The balance of convenience does not lie in favour of the appellants.

25. Nevertheless, the appellants are tenants of respondents No.3 to 6, and no injury, harm, or prejudice will be caused to them in the event of demolition of the suit structure. It is a settled position in

law that the tenants are least impacted by building demolitions because their occupancy rights are safeguarded. Additionally, 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.

26. Moreover, if post-demolition, respondents No.3 to 6 do not redevelop or reconstruct the suit structure, the appellants are not handicapped. The tenants are always at liberty to exercise their rights in terms of Section 499 of the Act for reconstructing the demolished building. A reference in this regard can be made to the decision of the Division Bench of this Court in *Chandralok People Welfare Association Vs State of Maharashtra*⁹.

27. In *Vivek Shantaram Kokate Vs MCGM*¹⁰, 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.

6. (2023) 4 Bom CR 145

7. (2023) 1 Bom CR 342

8. (2023) 4 Bom CR 632

9. 2023 SCC Online Bom 2300

10. (2020) 1 Bom CR 533

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 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."

28. In light of the above discussion, this Court does not find any error committed by the trial Court in refusing to exercise its discretion in favour of the appellants. Accordingly, the present Appeal from Order stands dismissed. Pending applications also stand disposed of.

29. At this stage, the learned Counsel for the appellants prays for the continuation of the *status quo* order for one week. Given the above, the request is rejected.

[R. N. Laddha, J.]