

Wadhwa

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13091 OF 2023

Chandrakant M Kherade & Ors	...Petitioners
<i>Versus</i>	
Thane Municipal Corporation & Ors	...Respondent

Mr Swatesh Tripathi, *for the Petitioners.*
Mr Narayan Bubna, *for Respondent No 1-TMC.*
Mr AA Kumbhakoni, *Senior Advocate, with Deepak Chitnis, i/b*
Deepak Chitnis Chiparikar & Co, for Respondent No 5.

CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 4th March 2024

PC:-

1. There is very little doubt in our minds that this Petition is not only an abuse of the process of this Court but is thoroughly mischievous. On 10th November 2023, we were persuaded to pass the following order:

“1. There is a controversy about the condition of a residential building of the Villa 16 CHSL at Sadhu Vaswani Nagar, Kopri Colony, Thane East. There are conflicting reports. There are also disputes amongst the society

members but those will not detain us today. We are actually concerned with the condition of the building and, since this is a Writ Petition, the action that the Thane Municipal Corporation (“TMC”) should or should be expected to take in that regard.

2. It is perfectly obvious that under law the TMC cannot and will not order the pulling down of an authorised structure that is otherwise in sound structural condition. Similarly, if an authorised structure can reasonably be repaired, there are adequate provisions to direct the carrying out of those repairs.

3. This is important because even in the Petition today we have two conflicting reports. There is one report that says the building is dilapidated and needs to be torn down. But there is a studied report obtained by the Petitioners from another consultant. A copy is at Exhibit “G” from page 183. Not only does this opine after several pages of analysis that the building can be repaired but annexed to that report is also a detailed repairs methodology. This is unusual. We have seldom seen such detailing in previous reports. In this report, individual structural elements have been mapped, drawn and a detailed method for repairing various structural and non-structural elements is set out from pages 223 all the way to page 251. There are also annexed to this report dozens of photographs identifying the work that needs to be done.

4. The TMC does not have the equivalent of the Mumbai Municipal Corporation’s Technical Advisory Committee. Whether it should or should not is a matter of policy for the TMC to decide and we say nothing in that regard. But it would be advisable if senior technical officers, and we would recommend a panel of three, met on an ad hoc basis and considered these two reports. They may also want to inspect the building themselves which they should

after prior notice to all concern. We make it clear that no member of the society and no office bearer will be permitted or entitled to obstruct such inspection by the Municipal Corporation.

5. As a first step, we request that these technical officers give us their recommendations and views as to whether the building needs to be brought down, can be repaired or, in that considered view it is not possible to affirmatively say without a further study by yet another structural auditor. If it is the third that is being recommended then, on the next date, few weeks from now we will consider the submissions as to which expert should be appointed and on what terms.

6. In the meantime, we grant the Petitioners leave to amend to join the society as a party Respondent to the Petition. That amendment is to be carried out by 21st November 2023 without need of reverification.

7. List the matter high on board on 6th December 2023.

8. In the meantime, the TMC will not ask the Petitioners or any other members or occupants of the society to vacate the respective premises, those members will continue to do so at their own risk as to all costs and consequences.”

2. The Petition proceeds on the basis stated in paragraphs 14 to 16 that if there are conflicting structural reports every Corporation in Maharashtra, including the Thane Municipal Corporation (“TMC”) must have what is called a Technical Advisory Committee (“TAC”). That is wholly incorrect. The establishment of the TAC was first done in 2014 by way of a set of guidelines issued by a Division Bench as an interim order in a Writ Petition

filed by the Municipal Corporation of Greater Mumbai (“MCGM”) against the State of Maharashtra.¹ In itself, that entire exercise was questionable to say the least because every court since has never ceased to wonder how a Division Bench could possibly have legislated. Indeed, at the final hearing of that Writ Petition the Division Bench of AS Oka, J (as he then was) with RI Chagla, J felt it appropriate to comment on the entire impermissibility of such an action by a Division Bench of the High Court.²

3. But by then the MCGM had adopted those guidelines as part of its policy. Therefore, that policy was not brought into question.

4. We have recently had occasion to comment on how that entire policy is being misused and was based on a fundamental and unsubstantiated distrust of the Municipal Corporation: *Kishore Satyani v Municipal Corporation of Greater Mumbai & Ors.*³ A brief background is set out in our judgments in *Andheri Purab Paschim Cooperative Housing Society Ltd v Municipal Corporation of Greater Mumbai & Ors.*⁴ and in *Hind Rubber Industries Pvt Ltd & Ors v State of Maharashtra & Ors.*⁵

5. In an appropriate case, we will consider whether that entire policy requires to be revisited because it has more or less resulted in

1 *Municipal Corporation of Greater Mumbai v State of Maharashtra & Ors*, Interim Order dated 23rd June 2014 in in Writ Petition 1080 of 2015..

2 2018 SCC OnLine Bom 816.

3 Order dated 10th October 2023, 2023:BHC-OS:11669-DB.

4 Original Side Writ Petition (L) No 4234 of 2023, order dated 12th September 2023.

5 2022 SCC OnLine Bom 1640 : (2023) 1 Bom CR 342.

the Writ Court Division Benches becoming a first appellate court on questions of fact and technical expertise, namely structural stability of a building. The expectation is that two judges of the High Court will decide which of the 17000 cessed buildings in Bombay are or are not structurally safe.

6. Now this Petition wants this principle expanded to the TMC. In paragraph 16 it says that such a TAC should have been set up by the TMC. In paragraph 17 it claims that those guidelines in Writ Petition (L) No 1135 of 2014 should apply to the TMC. That would make it even more jurisdictionally suspect, and had it done so that would have been entirely obiter. No such question arose before that Court of applying these measures to any Corporation other than the Municipal Corporation of Greater Mumbai.

7. Now our previous order was without drawing our attention to the fact that on 7th September 2023 we passed an order in Writ Petition No 10025 of 2023 filed by the very Society of which these 12 Petitioners are members challenging the very same notice that is the subject matter of the present Petition. The copy of that order is undoubtedly at Exhibit 'K' from pages 291 to 293 and it has not been suppressed. It reads as follows:

"1. The Petitioner is a society. It says that its building is dilapidated. There is a report from the Veermata Jijabai Technological Institute ("VJIT"). It is not necessary for us to examine this in any greater detail because the Municipal Corporation of Thane agrees that the building is in fact dilapidated. It has been issuing notices, and the most recent of thee is of 12th May 2023 at page 108A, addressed to owners, occupiers and tenants. This notice is issued under

Section 268(1) of the Maharashtra Municipal Corporation Act, 1949 (“**the MMC Act**”).

2. The learned Advocate on behalf of the Corporation states that there is an internal dispute in the society and that some members have refused to vacate. That is not the Corporation’s concern. The Corporation has complete powers under the MMC Act to enforce its notices and to require the vacating of the building if it is found to be structurally unsafe, dilapidated, in a ruinous or dangerous condition. The law in that regard is well-settled.

3. We fail to see how individual members of a society can oppose a decision taken by the very society of which they are members.

4. Finally, we note that there are a number of photographs from page 97 onwards that prima facie indicate severe structural distress. Of course, these are technical matters and we are not in a position to pronounce on those, but the photographs, obviously appended to the VJIT report, show that the reinforcement of slabs is exposed and corroded. Beams and slabs are cracked. Steel is exposed in some places. The recommendation of the expert body is that most of the structural elements of the building have lost their strength and therefore, the design load-carrying capacity as per the provision and requirements of the Indian Standard Code. There is a deterioration noted after carrying out tests in the structural elements and this includes slabs, beams and columns. This is set to be widespread and severe at several locations. A specific finding is that the collapse of these elements in many places is imminent. In fact, some of the structural elements have already collapsed. There is a possibility of a loss of lateral stiffness and stability of the building and the subsequent collapse of the building in case of an earthquake or any natural calamity. The building is said to have completed its

design life, to be beyond logical repairs and, specifically, unsafe for habitation. We note this because in this Court we are no strangers to sudden and unpredictable building collapses with an attendant loss of life and property. A few individuals cannot imperil not only their lives but the lives of others and the property of others.

5. We dispose of the Petition by clarifying that the Thane Municipal Corporation not only is at liberty but must proceed in accordance with law in exercise of all its powers to have the building evacuated to protect the lives and property not only of the members of the society but also of others in the vicinity.

6. The Petition is disposed of in these terms with liberty to the Petitioner to apply should the need arise.”

8. However, in the present Petition what is now alleged is that the Society filed that Writ Petition No 10025 of 2023 through its chairman by relying only on some documents and suppressing some others, and therefore a handful of members should be at liberty to proceed in the Writ Court directly contrary to a previous order and in opposition to the stand of the Society. This overlooks the fact that every single one of these members has supported the Society resolution in question and, further, that 20 of the 36 members have in fact vacated their premises and are awaiting redevelopment, which is sought to be stalled by these Petitioners.

9. We have noted this before that a handful of petitioners come forward and seek relief with no regard at all to others including their own neighbours who are directly adversely affected. They make no offer of security. They simply want injunctions, and it seems not to

matter to them that there is very real prejudice being caused to third parties. We are now making it clear that we will refuse to grant ad interim and interim reliefs unless there is extremely significant security provided for the prejudice being caused to other members (in addition to any loss to the society itself or to a developer that has been engaged). Without such security, we will not grant relief except in the most egregious circumstances.

10. These are clearly internal disputes in the Society and the disputes between members and the Society pertaining to the business and affairs of the Society. Their remedies lie elsewhere and we believe that steps have already been taken in that regard. This does not mean that those Petitioners who are opposed to the majority decision can move this Court and seek an order that is directly contrary to an order obtained by the Society in a Petition filed in the name of the Society.

11. Interestingly, prayer clause (e) of the Petition seeks that our order of 7th September 2023 be recalled or modified. That is an astonishing prayer because it is nothing more than a prayer for a review without making out a single ground for review and that too at the instance of a breakaway group of society members.

12. The basis of the Petition is also misconceived. It has been settled law for at least a decade if not more that individual members of the Society cannot agitate grievances regarding the affairs of the Society before a court contrary to the decisions of the Society taken

in General Body Meetings.⁶ In the words of a learned Single Judge of this court, KK Tated J in *Aditya Developers v Nirmal Anand Co-operative Housing Society*,⁷ once a person acquires membership of the Society he/she loses his or her individual identity. This entire branch of the law, one that has been repeated and reiterated and reaffirmed several times, including notably in *Girish Mulchand Mehta v Mahesh S Mehta*,⁸ has been completely overlooked in this Writ Petition. The Petition is thus totally and thoroughly misconceived.

13. We have very little doubt that the real purpose of this Petition is something other than what it is made out to be. It seems to us utterly unacceptable that the 12 Petitioners could literally hold to ransom the interests of persons who were once upon a time their fellow members, neighbours and acquaintances, i.e., the 24 other Society members.

14. The Petition is rejected.

15. All previous orders are vacated.

6 See: *Adityaraj Builders v State of Maharashtra*, 2023 SCC OnLine Bom 540; (2023) 3 AIR Bom R 650; *Deepak Prabhakar Thakur v MHADA*, 2023 SCC OnLine Bom 2234. *Westin Sankalp Developers v Ajay Sikandar Rana*, 2021 SCC OnLine Bom 421; *Nissa Hoosain Nensey v Pali Hill Neptune CHSL*, 2021 SCC OnLine Bom 9811; *Time Field Corporation v Sankalp CHSL*, 2022 SCC OnLine Bom 1436; *Chirag Infra Projects Pvt Ltd v Vijay Jwala CHSL*, 2021 SCC OnLine Bom 364.

7 2016 SCC OnLine Bom 100 : (2016) 3 Mah LJ 761.

8 2009 SCC OnLine Bom 1986 : (2010) 2 Mah LJ 657 : (2010) 1 Bom CR 31.

16. The Affidavit of Respondent No 5 starting from page 323 is taken on record. Copies are given to the other side.

(Kamal Khata, J)

(G. S. Patel, J)