

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

(SR. NO. 38) APPEAL FROM ORDER NO. 768 OF 2024
WITH
INTERIM APPLICATION NO. 14424 OF 2024
IN
APPEAL FROM ORDER NO. 768 OF 2024

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Bharati Shivanand Shetty And Others ...Appellants/Applicants
Versus
Municipal Corporation Of Greater Mumbai
And Others ...Respondents

(SR. NO. 39) APPEAL FROM ORDER NO. 773 OF 2024
WITH
INTERIM APPLICATION NO. 14466 OF 2024
IN
APPEAL FROM ORDER NO. 773 OF 2024

Bharati Shivanand Shetty And Others ...Appellants/Applicants
Versus
Municipal Corporation Of Greater Mumbai
And Others ...Respondents

Mr. Amerendra Mishra, for Appellants in both appeals.
Ms. Seena Rawade, for Respondent-BMC in both appeals.
Mr. Bhavik Manek a/w. Ms. Bharavi Shah i/b. Wadia Ghandy & Co.
for Intervener (Meru Paradise Villa LLP)

CORAM : M.M. SATHAYE, J.

DATE : 12th NOVEMBER, 2024

P.C. :

1. Heard learned counsel for the Appellants/original Plaintiffs and learned counsel for Respondent-Municipal Corporation. It is

This order is corrected pursuant to order dated 25th November, 2024.

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common ground before the Court that private Respondents in the appeals are occupants who were not available for filing the present appeals from order. A.O. No. 768 of 2024 is in respect of ground+3 structure with 56 occupants and A.O. No. 773 of 2024 is in respect of ground+1 structure with 12 occupants

2. The appeals challenge 2 Orders dated 25/09/2024 passed by Ad-hoc Judge, City Civil Court, Borivali Division, Dindoshi, Mumbai in Notice of Motion No. 1406 of 2024 and Notice of Motion No. 1407 of 2024. By the impugned orders, the motion filed by the Appellants seeking injunction against the Respondent- Municipal Corporation from taking coercive steps in respect of suit structures as per impugned notices dated 3/4/2024 issued U/s. 354 of Mumbai Municipal Corporation Act (for short “the said Act”) and further direction to conduct scientific test as per guidelines laid down in Writ Petition No.1080 of 2015 and further direction to conduct physical area survey of the flats in the suit structures and publish fresh area certificates as per guidelines in the said Petition, are rejected. It is not disputed that the physical area survey and publication of fresh area certificate has already taken place as per the order of this Court in other proceedings.

3. The Appellants claim to be the lessee and persons inducted by lessee in the structures on the subject matter property. In short, the Appellants are occupiers of the structures. It is admitted position that suit structures are more than 30 years old. The subject matter notices are issued u/s. 354 of the said Act and therefore, the crux of the matter is whether the suit structures are in dilapidated condition or

not.

4. Learned counsel for the Appellants submitted that according to the Appellants, the suit structures are still repairable and in fact their structural audit report classifying the structures as C-2-B was submitted by the Appellants. He submitted that without issuing notice to the Appellants, the TAC Committee has taken a decision, allegedly at the instance of the land owner, that the suit structures are of C-1 category.

5. Per contra, learned counsel for Respondent-Municipal Corporation, invited this Court's attention to the TAC Committee report dated 22/3/2024 and submitted that the necessary notice dated 5/6/2023 was issued to even the occupiers and tenants of the suit structure for carrying out repairs with the permission of the Municipal Corporation. She submitted that visit was conducted on 30/08/2023 and since it was observed that office bearers of the society, whose members are occupying suit structures, have not complied with notice requisition and the validity of the structural audit report has expired. She submitted that a letter dated 31/8/2023 directing to carry out fresh structural audit was issued. It is pointed that the representative of M/s. Frames Consulting Civil Structure Engineer, who had given report of C-2-B on behalf of Appellants/occupiers, was present in the meeting and as such Appellants can not contend that no notice was given and procedure was not followed.

6. For the purpose of record, it is noted that learned counsel

Mr. Bhavik Manek appeared on behalf of the Intervener who is present owner of the subject matter property. He contends that since his client was necessary party in the suits, a Chamber Summons was taken out, which was rejected and that rejection is under challenge in this Hon'ble Court. Be that as it is may.

7. I have perused the impugned order. The impugned order records that there are conflicting structural audit reports which were referred to T.A.C. which has come to the conclusion that the structure is C-1 category and liable to be demolished. The impugned order further records that the suit structure is very old.

8. On a query to learned counsel for the Appellants, it is stated that the report showing suit structure as C-2-B category is dated 10.04.2023. It is not disputed that this report recommended / suggested that repairs will have to be carried out to the said structures. However it is not brought to the notice of the Court from the record available before it, that any action of repairs, as suggested or recommended by the audit report relied upon by the Appellants themselves, were undertaken by the Appellants in last about 1 year and 7 months.

9. While the parties merrily litigate with each other in Courts, the old structures do not stop getting older and the process of dilapidation turning old structures into further ruins posing hazard to the occupants continues, whether the occupants like it or not or whether they take that risk or not.

10. It is observed in the impugned order that when the

Appellants/Plaintiffs were called upon to submit structural report, it was submitted, but there is no compliance of notice, as suggested in its audit report to carry out major repairs, because the report classified the structure as C-2-B category and the validity of the said report has expired.

11. Assuming that the Municipal Corporation had not followed the procedure of serving appropriate notice upon the Appellants, since there is nothing before the Court to suggest that the Appellants themselves made any efforts, acting on their own report which recommended repairs of the building.

12. In light of the aforesaid circumstances and considering the risk involved with the structures, I am not inclined to interfere in the impugned orders.

13. The Appeals are accordingly dismissed. Interim applications are also accordingly disposed of.

14. Needless to mention that the observations in the above order are limited to the purpose of deciding these appeals and the subject matter suits (L.C.Suit Nos. 834/24 and 835/24) will be decided in accordance with law, on their own merits. Rival contentions of both sides are kept open.

15. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)

This order is corrected pursuant to order dated 25th November, 2024.