

Shephali

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

Abrar Ahmed Salamatullah ...Petitioner
Versus
Municipal Corporation of Greater Mumbai & Ors ...Respondents

Mr Rakesh Kumar, with Aslam Shaikh, Vikash Giri, Akash Giri, BM Shaikh, Tabrej Khawaja & Y CS Lamba, for the Petitioner.
Mr Karl Tamboly, with Ryan DSouza, Fatema Kachwalla, Ahsan A, Huzefa Saiffee & Yogini Borad, i/b JSA, for Respondent No. 5.
Mr Joel Carlos, with Pooja Yadav, i/b Sunil Sonawane, for the Respondent-MCGM.

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CORAM G.S. Patel &
Shyam C. Chandak, JJ.
DATED: 3rd January 2024

PC:-

1. Heard Mr Rakesh Kumar for the Petitioner and Mr Carlos for the Municipal Corporation of Greater Mumbai (“**MCGM**”) as also Mr Tamboly for the 5th Respondent, the Saiffee Burhani Upliftment Trust (“**SBUT**”).

2. In Mumbai, the ‘C’ Ward is widely acknowledged to be one of the city’s most densely populated areas. The population densities

here are amongst the highest in the world. Access lanes are narrow. Many of the structures in this area, which spreads over the Bhuleshwar Division, are very old and many are in a structurally unsound condition. It is here that the 5th Respondent, the SBUT, has for the past decade or so undertaken what is conceivably one of the most ambitious urban renewal projects possibly in the country and certainly in this city. This involves the makeover and redevelopment of the entire Bhendi Bazaar area. The project has its detractors just as much as it has its supporters and it is certainly not without its complexities. Many of the buildings here are tenanted. Over years, ownership of buildings has been fragmented and there are several individuals with fractional ownership. In undertaking the redevelopment, the SBUT has had to address all these concerns building by building and plot by plot. Necessarily, some of the redevelopment involves a composite development or a cluster development. Our Writ Courts are no strangers to repeated Petitions and applications by occupants or fractional owners when they come face to face with such redevelopments. The pattern of redevelopment is also not uniform. There are some structures or plots which are acquired by the SBUT. There may be others where it is simply a developer. It may also in some cases be a part owner along with others.

3. We are concerned in this Writ Petition with a building known as Salamat House at CS No 4170 Bhuleshwar Division at 8 Saifee Jubilee Street, Mumbai 400 003.

4. The building originally was of ground and three upper floors. There is no dispute about this or about the fact that at the ground floor level there were commercial shops.

5. The aridity of this factual narrative does no justice to the actual condition at site. On 19th October 2023, we were shown certain photographs by Mr Tamboly for the SBUT. The building was shown to be surrounded by an open market on all four sides. On that date, a Division Bench of which one of us (GS Patel, J) was a member made the following order:

“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.”

6. SBUT has filed an Affidavit in Reply and then an Additional Affidavit but before we turn to the rival contentions, to give an immediate idea of what it is precisely that we are dealing with, we turn to the undisputed images that are annexed by the SBUT to its

Additional Affidavit from pages 345 onwards. These images run all the way to page 352.

7. This is essential to an understanding of the manner in which the Petition is laid and what has been canvassed before us, viz., that the statutory procedure and the mandated guidelines have not been followed by the MCGM while stating the building to be dilapidated and dangerous. Reference in this regard is made and which we will consider at some length a little later to Sections 354 and 353-B of the Mumbai Municipal Corporation Act, 1888 (“**the MCGM Act**”).

8. But who is the Petitioner? He claims to be a fractional owner with an undivided 20% share, right, title and interest in Salamat House. That is what paragraph 2 of the Petition itself narrates. But this claim to ownership, fundamental to the construct of Mr Kumar’s arguments for the Petitioner, is most contentious. The first Affidavit in Reply by Abdullah Bhai Electricwala on behalf of the SBUT says in paragraph 4:

“4.1 The present Petition is filed impugning the Notice dated 30th January 2015 issued by the Respondent Nos. 1 and 2 herein. At the time of filing of the Petition the Petitioner claimed to be a co-owner of 20% of the said Property, being land bearing C.S. No. 4170, situated at Saifee Jublee Street, Bhendi Bazaar, Mumbai-400 003 (“**said Land**”) and the building known as ‘Salamat House’ comprising of Ground plus 3 (three) upper floors (“**said Building**”) situated thereon. The said Land and the said Building are hereinafter collectively referred to as “**said Property**”.

4.2 The Petitioner also claimed rights as owner of a further 12% of the said Property through an assignment from the three daughters of another Mr. Sadruddin Mohammed Shafi. As the document produced at Exhibit B of the said Petition is not a registered document, this Respondent is not in a position to comment on this claim of the Petitioner. Neither Mr. Shafi nor the signatories to this document are parties in the present Petition.

4.3 At the time of filing of the said Petition this Respondent was the co-owner of 64% of the said Property. The same was acquired by this Respondent from the remaining co-owners of the said Property vide registered deeds of conveyance. I crave leave to refer to and rely upon the same when produced.

4.4 Pursuant to acquisition proceedings undertaken, *inter alia*, under Sections 125 and 126 of the Maharashtra Regional and Town Planning Act, 1966 (“**MRPT Act**”) read with Regulation 33(9) of the Development Control and Planning Regulations, 2034 (“**DCPR**”) and also read with the relevant provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (“**Land Acquisition Act**”) the said Property (including the Petitioner’s alleged rights as a co-owner therein) stood acquired by an award bearing No. LAQ No. 2/2019 and dated 30th December 2019 (“**said Award**”) duly declared by the Land Acquisition Officer & Resident Deputy District Collector, Mumbai City. I crave leave to refer to and rely upon the same when produced.

4.5 Pursuant to the said Award, a notice dated 27th January 2020 was issued by the Land Acquisition Officer calling upon, *inter alia*, the Petitioner and other co-owners, to hand over peaceful and vacant possession of the said Property to this Respondent.

4.6 Accordingly, on 3rd February 2020, symbolic possession of the said Property was duly handed over by the Surveyor, of land acquisition office to this Respondent. Hereto annexed and marked as **Exhibit A** and **A-1** is a copy of the possession receipt dated 3rd February 2020, together with an English translation thereof.

4.7 Pertinently, the Petitioner has not challenged the acquisition proceedings, the said Award or the subsequent steps taken pursuant thereto. It is submitted that the Petitioner does not have any vestige of ownership in the said Property and therefore no locus to challenge the Impugned Notice or maintain the said Petition.

4.8 It is trite law that the rights of the tenants and occupants of a structure are wholly unaffected by the operation of, or exercise of powers under, Section 354 of the Mumbai Municipal Corporation act, 1888 (“**MMC Act**”). The fact that the Petitioner is an occupant of the said Building does not entitle them to maintain the said Petition. The Petitioner, as an occupant of the structure on the ground floor of the said Building, are entitled to temporary alternate accommodation (in the form of rent or transit) and permanent alternate accommodation in accordance with the provisions of Regulation 33 (9) of the DCPR at parity with the other occupants of the Scheme and subject to determination of their rights by Respondent No. 3 – MHADA.”

9. It is true that the challenge in the Petition as originally filed was to the notices of 30th January 2015, but this was later amended to include and even earlier notice of 25th November 2014.

10. The Petition was initially filed only on 10th January 2020.

11. But paragraphs 4.4 and 4.7 extracted above from the Affidavit in Reply make it clear that a process contemplated by law was initiated, adopted and followed for an acquisition of the entire property resulting in an award of 30th December 2019. The Petition itself was filed only on 10th January 2020 purporting to assail notices of 2014 and 2015 but making no reference at all these acquisitions. The reply in paragraph 4.7 says there is no challenge to the acquisition proceedings. We asked if there was a Rejoinder. Apparently, it was served but has not yet been filed. We have seen that Affidavit in Rejoinder and paragraphs 4.4 and 4.7 of the Affidavit in Reply are dealt with in paragraphs 5 and 8 respectively of the Rejoinder at pages 311 and 313. Paragraph 8, in purported response to paragraph 4.7 of the Reply, only says this:

“8. In addition to the aforesaid, Respondent No. 1 has issued a letter dated May 25, 2022, to the tenants and occupiers along with Respondent No. 5 being the owner of the Subject Property referring to the Notice issued by it in November 2014 and reiterating that the said Building is in a dilapidated condition and that there was a previous calling upon the concerned parties to pull down the said Building. Respondent No. 1 had further stated that the responsibility of the cluster development of Bhendi Bazaar was that of Respondent No. 5. Respondent No. 1 also directed the tenants and occupants of the said Building and Respondent No. 5 to comply with the said directions issued earlier immediately to avoid any untoward incident. A copy of the said letter dated May 25, 2022 is annexed hereto as Exhibit “B”.

12. There are no details of the acquisition proceedings. We are only orally informed that some Writ Petition has been filed

challenging the entire acquisition proceedings and that is yet pending. But we are also informed that simultaneously the Petitioner has sought enhancement of the awarded compensation.

13. The difficulty with this approach is that the Petitioner seems to believe that notwithstanding the acquisition award, and notwithstanding the fact that the acquisition and the award have never been set aside, we must proceed on the assumption that the Petitioners claim to continued and continuing 20% ownership is undisputed and not contentious. That is a wholly unsafe basis given the fact that there is an award properly made under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (“**Fair Compensation Act**”). The mere filing of a Petition challenging the acquisition proceeding will not render the award non est, nugatory or of no legal effect.

14. The immediate consequence is that the fundamental basis of the Petition is lost, viz., that the Petitioner is demonstrably owner of the property in question. Matters may have been different if that ownership right as on the date of institution of the Petition or even as on today was confirmed in favour of the Petitioner. But that is not so. The Petitioner cannot today therefore seek to effectively nullify the entire acquisition and all development steps taken thereafter by challenging in a 2020 Petition notices of 2014 and 2015 in this fashion.

15. The other public law element that disturbs us greatly is the attempt by the Petitioner to have his narrow private claims to prevail over a much larger public concern. In this context, we believe Mr Carlos for the MCGM is perfectly justified in asserting that while the MCGM is not concerned with internal ownership disputes or how compensation is apportioned, as a planning authority under the Maharashtra Regional Town Planning Act, 1966 (“**the MRTP Act**”) and as the civic authority under the MCGM Act , it has a statutory duty to ensure public safety and to ensure that dangerous buildings do not endanger the public. There is little purpose in saying, he submits, and we think correctly, that the area around the building has been cleared. It can hardly be suggested that passers-by should be put at risk because of these private disputes being raised by the Petitioner. The photographs themselves clearly demonstrate that the building is wholly uninhabitable. One wall remains standing here, half a wall exists there and that is all there is to it.

16. At no point, despite our mentioning this several times, has the Petitioner even offered to furnish adequate security for a possible loss of life or property should there be an untoward incident and should this building collapse which it is imminently likely to do given its visible condition.

17. Mr Kumar attempted the argument that he would have no objection to the upper floors being removed provided the Petitioner was allowed to continue to occupy the ground floor and redevelopment could continue for the rest of the building. That submission has only to be stated to be rejected. The reasons are

many. To begin with, the property is not partitioned. Nobody has given the Petitioner a differentiated, segregated or divided in specie right, title and interest to any part of the building. That claim itself is itself disputed. Second, the Petitioner's entire claim to ownership is itself in doubt especially following the award which has till date not been set aside. There is absolutely no basis, therefore, for the Petitioner to claim in 2024 that he has a continuing 20% share, right, title and interest in the building and although this has never been shown to be divided by metes and bounds or in specie, it can and should be held to be limited as Mr Kumar puts it, to the ground floor. That submission seems to be on the basis that the Petitioner is in occupation of some of the ground floor units. That does not mean that his ownership rights can be crystallized in this ad hoc manner.

18. Reference is then invited to Section 353-B of the MMC Act. It reads thus:

“353B. Structural Stability Certificate

(1) Every owner or occupier of a building in respect of which a period of thirty years, from the date of—

(i) issue of its completion certificate by the Corporation; or

(ii) issue of permission to occupy a building under section 353A; or

(iii) its physical occupation of at least 50 per cent., of its builtup area,

whichever is earlier, has expired, shall cause such building to be examined by a Structural Engineer registered with the Corporation for the purposes of certifying that the building is fit for human habitation (such certificate hereinafter

referred to as “the Structural Stability Certificate”). The Structural Stability Certificate issued by such Structural Engineer shall be submitted to the Commissioner.

(2) The Structural Stability Certificate shall be submitted within one year from the expiry of a period of thirty years referred to in sub-section (1), and every ten years thereafter or such earlier period as the Commissioner may determine having regard to the condition of the building and the corrective repairs carried out by the owner or occupier.

(3) Notwithstanding anything contained in sub-section (1), the Commissioner may, at any time, after having recorded the reasons, in writing, direct the owner or occupier of a building, to cause such building to be examined by such Structural Engineer and to submit to the Commissioner, the Structural Stability Certificate, as required under sub-section (1), within the period not exceeding thirty days as specified by the Commissioner, in such direction.

(4) If the Structural Engineer recommends any corrective repairs for securing the structural stability of the building, such corrective repairs shall be carried out by the owner or occupier of a building to the satisfaction of the Commissioner.

(5) Any owner or occupier, as the case may be, who fails to carry out corrective repairs for securing structural stability, within a period of six months from the date of report of the Structural Engineer, shall be punished with the fine as provided in section 471.

(6) Notwithstanding anything contained in sub-section (5), the Commissioner may, after giving the owner or occupier, a notice in writing, require him to carry out, within the period specified in the notice, corrective repairs for securing structural stability of a building. If the owner or

occupier fails to carry out such corrective repairs within the period specified in the notice, the Commissioner may carry out the same and the expenses incurred by the Commissioner on such repairs shall, on demand if not paid within thirty days, be recovered from the owner or occupier as arrears of property tax.

(7) If there is any dispute about the amount of expenses for which demand is made under sub-section (6), an appeal may be preferred to the Chief Judge of the Small Causes Court, but no such appeal shall be entertained by the said Chief Judge, unless—

(i) it is preferred within twenty-one days from the date of receipt of notice of such demand;

(ii) the amount for which demand is made is deposited with the Corporation and a true copy of the receipt showing that the amount has been so deposited accompanies the appeal.

(8) In case the appeal is decided in favour of the appellant and the amount of expenses deposited with the Corporation is more than the amount payable by the appellant, the Commissioner shall adjust the excess amount with interest at 6.25 per cent, per annum from the date on which the amount is so deposited by the appellant, towards the property tax payable by the owner in respect of such building thereafter.”

19. The submission before us is that at no point was there a direction under sub-section (3) to the Petitioner to cause the building to be examined by a structural engineer or to submit a structural stability certificate.

20. It is also submitted that Section 354 which speaks of the removal of structures that are ruinous must only follow the structural stability certificate provisions of Section 353-B. The second submission is unworthy of acceptance. A 353-B structural stability certificate may or may not precede a Section 354 notice. Section 354 is in a separate part captioned ‘Dangerous Structures’. Section 353-B is in an earlier provision that begins with Section 350 and is captioned ‘Inspection’. Section 354 of the MCGM Act reads thus:

“354. Removal of structures, etc., which are in ruins or likely to fall

(1) If it shall at any time appear to the Commissioner that any structure (including under this expression any building, wall or other structure and anything affixed to or projecting from any building, wall or other structure) is in a ruinous condition, or likely to fall, or in any way dangerous to any person occupying, resorting to or passing by such structure or any other structure or place in the neighbourhood thereof, the Commissioner may, by written notice, require the owner or occupier of such structure to pull down, secure or repair such structure subject to the provisions of section 342 of danger therefrom.

(2) The Commissioner may also if he thinks fit, require the said owner or occupier, by the said notice, either forthwith or before proceeding to pull down, secure or repair the said structure, to set up a proper and sufficient hoard or fence for the protection of passers by and other persons, with a convenient platform and hand-rail, if there be room enough for the same and the Commissioner shall think the same desirable, to serve as a footway for passengers outside of such hoard or fence.”

21. Now sub-section (1) of Section 354 tells us all that is required in a matter like this. The notice under Section 354 is to be given to the owner or occupier of the structure to pull down, repair or secure the structure.

22. What the Petitioner now seeks by mounting a challenge to a notice that was five years prior to the date of the filing of the Petition and five years prior to the date of the acquisition award. is to set the clock back entirely and, in effect, by this Writ Petition seek to nullify effectively the entire acquisition proceedings. That this is being done at considerable risk to the public can hardly be denied.

23. We are also unable to see any valid justification for the complete elision of all mention of the acquisition proceedings and for the events from 2015 to 2019 in the body of the Petition itself.

24. The first Affidavit of the SBUT deals with the cluster redevelopment scheme and sets out the parameters of this project. There are about 3200 residential families and 1300 commercial businesses affecting over 20,000 people that are part of the project. The entire Bhendi Bazaar area had about 4263 families. They represent about 95% of the total population affected by the project. These 4263 families have vacated the premises or are in transit accommodation on transit rent. About 3040 are residential and 1223 are commercial tenements. As part of the redevelopment, there is a proposed realignment of roads and streets. To give some idea of how this is being done, there were altogether 250 buildings in the Bhendi

Bazaar area. Since this is a cluster redevelopment, these are being grouped together in 14 buildings.

25. As to the structural condition of the building, we do not believe that any amount of argumentation by or on behalf of the Petitioner can possibly change the facts on the ground. This is truly a case where seeing is believing but arguing is not. The first notice under Section 354 of the MMC Act was issued on 25th November 2014. It was not originally challenged in the Petition. A challenge to that has been added by a later amendment. Then another notice was issued on 30th January 2015. In this the MCGM reiterated its stand that the building was — and that is in 2015, nearly a decade ago — dilapidated and dangerous. It can hardly be suggested that the passage of 10 years has somehow magically improved the condition of the building.

26. The Petitioner actually obtained a structural audit report of 9th July 2018. A copy of that report is annexed at Exhibit “G” to the limited Affidavit in Reply. This is by a private consultant and not by a reputed institute. The purported classification of the building was only for structural repairs, but this is by no means accepted and is also contentious because the report itself notes that structural elements and members are severely damaged and corroded. Inconsistently, that same structural consultant then purported to issue a certificate saying that the building was structurally stable.

27. On 15th July 2020, the MCGM issued a circular classifying the building in the ‘C1’, i.e., extremely dangerous category.

28. We have noted these contentions only because it seems to us unreasonable to accept a single one of the submissions that are advanced and which would have the effect of perpetuating this dangerous structure.

29. The Additional Affidavit now notes that the Petitioner has challenged the acquisition award in Writ Petition (L) No 7103 of 2021 but no reliefs whatsoever have been obtained. Simultaneously the Petitioner also filed another Writ Petition (L) No 3118 of 2019 challenging proceedings under Section 95A of the Maharashtra Housing and Area Development Act, 1976 (“**the MHADA Act**”). In that Writ Petition, this very Petitioner accepted in paragraph 5 that the building was dilapidated and dangerous and was classified by the MCGM in the ‘C1’ category. Paragraph 8 of MHADA’s Affidavit in that Writ Petition reports a personal site visit of the officer with photographs and continues to report that it is dangerous.

30. There is an argument that since the building is not part of the list of ‘C1’ category buildings, therefore, it is not dilapidated. A look at the photographs that we have annexed above is sufficient to reject this argument. The second argument is that in the RTI query the MCGM said that it had no files in regard to a Section 354 notice. That does not carry the matter further.

31. It is difficult to accept therefore the submission that is canvassed before us that we should in this Petition now seriously consider upholding the challenge in prayer clauses (a) and (b) of the

Petition. That would require us to proceed on the basis that the building is otherwise structurally safe.

32. We pause for a moment to look at the grounds in the Petition as it was originally instituted. Ground (D) says that the Respondents have not followed what are now known as the Technical Advisory Committee (“TAC”) guidelines calling for competing structural audit reports. But as we have noted, these arguments and submissions will not and cannot change the nature or character of the structure as shown before us. Importantly, the photographs that we have seen in the Additional Affidavit and some of which we reproduced are entirely undisputed.

33. In our view, there is absolutely no merit in the Petition. If the Petitioner has any right to enhanced compensation or any right as owner or occupant, there is no doubt that these will be protected or preserved in the course of redevelopment. A redevelopment of a structure does not, as the SBUT itself says on Affidavit, adversely affect the interest of any tenant or occupant or even an owner. Such an occupancy or tenancy need not be related to ownership.

34. The Petition is accordingly dismissed. Rule is discharged. In the facts and circumstances of the case there will be no order as to costs.

35. There is no question of stay of this order as there was not interim relief in favour of the Petitioner at any time.

(Shyam C. Chandak, J)

(G. S. Patel, J)