

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1160 OF 2024

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1. **SANGHVI PARSSSVA BUILDCON LLP,**
A limited liability partnership registered under the provisions of the Limited Liability Partnership Act, 2008 having its office at Office No 104, First Floor, Bharat House, Mumbai Samachar Marg, Stock Exchange, Fort, Mumbai – 400 023.
2. **SANGHVI PREMISES PVT LTD,**
Company registered under the provisions of the Companies Act, 1956 having its registered office at 1st floor, Sanjana Mansion, Dr BA Road, Byculla (West), Mumbai – 400 027.

... PETITIONERS

~ VERSUS ~

1. **STATE OF MAHARASHTRA,**
Through the Urban Development Ministry, Mantralaya, Mumbai – 400032.
2. **THE MUNICIPAL CORPORATION OF GREATER MUMBAI,**
statutory authority constituted incorporated under the provisions of Mumbai Municipal Corporation Act,

1888, having its address at Mahapalika Bhavan, Fort, Mumbai – 400 001.

3. **ASSISTANT ENGINEER,**
(Building and Factory), G/South Ward
Office of the Assistant Commissioner,
NM Joshi Marg, Lower Parel,
Mumbai – 400 013.
4. **MUMBAI BUILDINGS REPAIRS
AND RECONSTRUCTION BOARD,**
through its Chief Officer,
Having office at Griha Nirman Bhavan,
Bandra (E), Mumbai – 400 051.
5. **MAHARASHTRA HOUSING AND
DEVELOPMENT AUTHORITY,**
a statutory authority constituted under
the provisions of the Maharashtra
Housing and Development Act, 1976
having its office at Griha Nirman
Bhavan, Bandra (East),
Mumbai – 400 051.
6. **EXECUTIVE ENGINEER,**
having address at office of the Executive
Engineer, G-S Division, MBR & R
Board, Prabhadevi (W),
Mumbai – 400 013.

...RESPONDENTS

APPEARANCES

FOR THE PETITIONERS **Mr Mayur Khandeparkar, with**
Aadil Parsurampuria, Tejas
Agarwal, Ashutosh Agarwal,
Hanshi Shah & Jyoti, i/b IC
Legal.

FOR RESPONDENT NO.1- STATE **Mr Vikrant V Parashurami, AGP.**

**FOR RESPONDENT
NO.2-BMC.**

Ms Pooja Yadav.

**FOR RESPONDENT-
MHADA**

Mr PG Lad, *with Shreya Shah.*

**CORAM : G.S. Patel &
Kamal Khata, JJ.**

DATED : 19th March 2024

ORAL JUDGMENT (Per GS Patel J):-

1. Rule, returnable forthwith.

2. Our order of 13th March 2024 reads thus:

1. In the Petition like this, we would have made Rule absolute even on mentioning of the matter. There are only two reasons why we do not do this. First, that Ms Yadav points that this is a first listing and therefore she needs time to take some minimal instructions which is not unreasonable. The second is that the Maharashtra Housing and Area Development Authority (“MHADA”) which is otherwise regularly represented in our Court is not present today.

2. This is a peculiar case where the Petitioners are caught between Scylla and Charybdis, the proverbial rock and a hard place. Which is the rock and which is the hard place we leave to imagination and we resist the temptation to call one the devil and the other the deep sea. The two entities are the Municipal Corporation of Greater Mumbai (“MCGM”) and MHADA. They agree on one aspect namely, that the Petitioners’ Building at Parel is indeed dilapidated. Both say so. But on everything else that matters

they cannot agree. Most especially they cannot agree on *who* should give the Petitioners permission to demolish the building.

3. Mr Khandeparkar for the Petitioners has a brace of prayers. There is one against MCGM. There is another against MHADA. If we do not have cooperation from these two agencies and in the shortest possible time, we propose to permit the Petitioners by virtue of our order to bring down the structure subject to the Petitioners having adequate provisions in place with any existing tenants whether they are in occupation or not. We say this because this administrative inaction itself poses a danger to everybody including the owner of the structure and every occupant inside it.

4. List the matter high on board on 19th March 2024.

5. In a worst case scenario we propose to make Rule absolute in terms of both prayer clauses (a) and (b), and direct both authorities to issue the necessary demolition or take down notice. That way neither can complain against the other.

3. The five prayers in the Writ Petition from pages 35 to 37 read thus:

a) That this Hon'ble High Court be pleased to issue a writ of mandamus, or any other writ, order or direction, directing Respondent No. 2 and its officers, to act in accordance with the provisions of the Mumbai Municipal Corporation Act, 1881 including Section 354 thereof and the guidelines framed for demolition of dilapidated buildings and thereafter pull down the dangerous and dilapidated subject building being "Tulsi Building" standing on Plot bearing CS No. land bearing CS No.253 of Lower Parel Division, Senapati Bapat Marg, Lower Parel.

Mumbai - 400 013;

b) That this Hon'ble High Court be pleased to issue a writ of mandamus, or any other writ, order or direction, directing Respondent No. 4 to 6 and their officers, to act in accordance with the provisions of the Maharashtra Housing and Development Act, 1976 including Section 76 thereof and thereafter pull down the dangerous and dilapidated subject building being "Tulsi Building" standing on Plot bearing CS No. land bearing CS No. 253 of Lower Parel Division, Senapati Bapat Marg, Lower Parel, Mumbai - 400 013;

c) That this Hon'ble High Court be pleased to declare that clause 14 of the NOC's dated 15th November 2018 as revalidated on 24th February 2020, 25th November 2021 and 30th November 2023, in that it places the responsibility of demolishing the subject dilapidated "Tulsi Building" upon the Petitioners, is arbitrary, unreasonable and violative of the provisions of the Mumbai Municipal Corporation Act, 1881 and the Maharashtra Housing and Development Authority Act, 1976;

d) That this Hon'ble Court be pleased to direct the Respondents to recall and/or set aside all the including the letters dated 16th November 2021, 28th December 2021, 29th March, 2022, 12th April, 2022, 5th April, 2022, 20th June, 2022 and 24th February, 2023 and all other correspondences/permissions addressed by Respondent authorities to the Petitioners placing the responsibility of demolishing the subject dilapidated "Tulsi Building" upon the Petitioners, as arbitrary, unreasonable and violative of the provisions of the Mumbai Municipal Corporation Act, 1881 and the Maharashtra Housing and Development Authority Act, 1976;

e) That this Hon'ble High Court be pleased to issue a writ of mandamus, or any other writ, order or direction,

directing Respondent Nos. 4 to 6 to forthwith issue their NOC to enable Respondent No. 2 and/or their officers to forthwith demolish the dangerous and dilapidated building being “Tulsi Building” standing on Plot bearing CS No. land bearing CS No. 253 of Lower Parel Division, Senapati Bapat Marg, Lower Parel, Mumbai - 400 013.

4. There is a photograph of the structure at pages 48 and 49.

5. There is no dispute that the building, called ‘Tulsi Building’, is indeed in such a condition that it requires to be pulled down. The grievance in the Petition is that between the two of them, the two authorities namely the Brihanmumbai Municipal Corporation (“**BMC**”) and the Maharashtra Housing and Area Development Authority (“**MHADA**”), have placed the responsibility for pulling down the building on the Petitioners.

6. ‘Tulsi Building’ is a ground and two floor structure. It was built sometime in 1910 or thereabouts. It is entirely tenanted. There are 57 residential and six commercial or non-residential tenements. The whole structure is a load bearing structure. It is in a seriously dilapidated condition. No tenant is opposing redevelopment, at least not at present. The 1st Petitioner is a developer. The 2nd Petitioner made an offer letter to all the tenants/occupants saying it obtained the consent of more than 70% of the tenants. It submitted a proposal to the Repair Board for redevelopment under Development Control Regulation 33(7) (“**33(7)**”) of the Development Control Regulations 1991 (“**DCR 1991**”). A sample consent Affidavit is annexed. MHADA has separately issued a certification list of

tenants/occupants in the building. This has the name of 61 persons (possibly less than the aggregate number mentioned in the Petition). There is also no dispute that MHADA issued a No Objection Certificate (“**NOC**”) on 15th November 2018 under 33(7) of DCR 1991 for the redevelopment. Obviously, the redevelopment involved a pulling down of the structure. A revised NOC followed on 11th July 2019, this time under the amended and enlarged provisions of 33(7) of the Development Control and Promotion Regulations 2034 (“**DCPR 2034**”). There is yet another revised NOC of 24th February 2020 from MHADA. Clause 14 of the latest revised NOC says that it is the sole responsibility of the NOC holder to carry out repairs until the building is demolished. The Repair Board has reserved its rights to direct the carrying out of such essential repairs.

7. On 30th March 2021, the 2nd Petitioner sold the property to the 1st Petitioner. The Deed of Conveyance is registered.

8. The BMC issued a Notice on 24th May 2021 under Section 353B of the Mumbai Municipal Corporation Act 1888 (“**BMC Act**”) demanding a Structural Stability Report and an Audit after an examination by a structural consultant. The 2nd Petitioner appointed a consultancy firm. Sometime in late August 2021, a small portion of a common passage slab on the second floor of the building collapsed. This damaged some portions of the common passage areas on the first floor. Six tenants had to be urgently evacuated and shifted temporarily to a nearby hotel with arrangements for accommodation and food. The 2nd Petitioner says that it bore all these expenses. Some photographs are annexed. The

collapse is also not contentious because the Executive Engineer of MHADA issued a letter on 30th August 2021, the very next day recording what had happened the previous day. On 13th September 2021, the 2nd Petitioner's structural consultant submitted a Structural Audit Report. It had carried out all necessary tests. Its conclusions were that the century-old structure had outlived its projected life. 'Tulsi Building' needed to be evacuated and pulled down urgently. A specific finding was that the building was entirely beyond repairs. Consequently, it was recommended that it be classified as a C1 Category building.

9. On 14th September 2021, the 2nd Petitioner informed the 3rd Respondent, the Assistant Engineer about the Structural Report and the recommendation of the C1 categorization.

10. While this was going on, the 2nd Petitioner indicated that it was agreeable to execute Permanent Alternate Accommodation Agreements ("PAAAs") with all tenants/occupants and pay them reasonable transit rent once the building was vacated. There is some mention in paragraph 3.15 of the Petition that the tenants did not cooperate. Thus, the Petitioners sought the assistance of the statutory authorities. The Structural Audit Report was communicated to the tenants/occupants as was the proposed categorization in the C1 Category. Apparently, there is an association of tenants.

11. However, it seems that on 16th November 2021 and again on 28th December 2021, the 6th Respondent, the Executive Engineer

of the Repair Board, wrote to the 2nd Petitioner saying that the Structural Reports submitted to it had been sent on by the BMC to MHADA with a request that the matter be examined. The 2nd Petitioner was told that it carried the responsibility to carry out repairs in a timely fashion. This was despite the finding of the structural consultant that the building could not in fact be repaired.

12. Oddly enough, on 25th November 2021, the 4th Respondent i.e., the Repair Board, revalidated the previous NOCs that were granted to the Petitioners and also granted an extension to 14th November 2022. This process of the Petitioners writing to the authorities that the building was not in a stable condition and that it was unsafe for continued occupation went on.

13. On 3rd March 2022, the Executive Engineer of the Repair Board wrote to the tenants/occupants and the 2nd Petitioner received a copy of this demanding that the tenants cooperate by executing the required PAAAs. There was a mention that the building was in a dilapidated condition. Then, the Petitioner was informed that a major crack had appeared and part of a one veranda was in imminent danger of collapse. This constant back and forth in correspondence continued through much of 2022. There were some complaints in the meantime by one or more occupants of the building but all seemed to be agreed that some action was necessary and that the building was unsafe. We have not seen any communication from the tenants to the contrary i.e., to suggest that the building can be repaired. In fact, there is a letter of 23rd May 2022 by some of the tenants saying explicitly that the building is

over 100 years old, in poor condition, suffers major leakages and is unsafe for them and their families.

14. By this time, close to a year had passed since the Structural Audit Report of 13th September 2021. The Petitioners kept writing letters to the various authorities. All that the Petitioners seem to have received were correspondences saying that the Petitioners had responsibility to carry out the necessary repairs and to render the building safe. Between them, MHADA and the BMC have, or so paragraph 3.29 would indicate, some issues of jurisdiction. Ultimately, on 16th December 2022, the 4th Respondent, the Repair Board sent a show cause notice to the 1st Petitioner demanding “necessary repairs to the building”. Then, in early February 2023, the Repair Board said that the responsibility for demolishing the building lies with the 2nd Petitioner.

15. In the meantime, the Petitioners submitted plans for redevelopment. An Intimation of Disapproval (“**IoD**”) was issued on 28th July 2023 by the BMC.

16. Now this tells us that since 2012 all the way till 21st January 2023, almost nothing has been done about this building. On that date, some tenants wrote to the Repair Board again complaining about the severely dilapidated condition of the building and saying explicitly that it would not be safe to require the tenants to continue in occupation.

17. Finally on 30th November 2023, MHADA issued a final revised NOC for redevelopment under 33(7) of DCPR 2034.

18. The complaint in the Petition, as is clear from paragraph 4, is about the alleged inaction.

19. There are very many grounds set out but these are more or less a reiteration or a repetition of the factual narrative. The two prayer clauses that we are principally concerned with, prayer clauses (a) and (b) seek directions to the BMC or in the alternative MHADA to themselves pull down the structure.

20. That the structure requires to be pulled down is not in dispute. Nobody is contesting this: not the Petitioners, not MHADA, not the BMC and not the tenants. The precise terms of the redevelopment are not an issue before us. There are revised NOCs. There is an IoD. The NOC from MHADA and the IoD from the BMC cannot be progressed unless the building is first brought down. It really is as simple as this.

21. Of course, this requires that the Petitioners must have in place proper PAAs with all the tenants and must make available to them transit rent in advance. That cannot be the responsibility of either MHADA or the BMC.

22. At the same time, the demolition or bringing down of a building in such structural distress is a complex exercise that must be done with care. This is particularly true if the building is on a

road and is likely to affect the continued use of the road and safety of others on that road, whether these are pedestrians or persons in vehicles. The property and lives of others should not be put at risk.

23. We also do not see why the owner of a building should, when required to pull down a structure, entirely be allowed to throw up its hands and say that the bringing down of the structure is the responsibility of the BMC or MHADA. The BMC may well have a supervisory role in this regard as might MHADA. But the actual planning of the demolition, the actual planning of the exercise i.e., the relocation of the tenants, the evacuating of the building of individuals and their belongings, and then the planned and phased bringing down of the building is something that the Petitioners must do. Our reading of this correspondence is that between them these two authorities have only been asking the Petitioners to take responsibility for the Petitioners' own structure. There is a very real risk involved in having this demolition carried out by the BMC or MHADA. It would conceivably expose officers of the BMC or MHADA to all manner of claims should this not be done in an appropriate fashion for whatever reason. After all this is private property. MHADA and the BMC stand to gain nothing (apart from the usual high rates of fees, demands, charges and premiums) from this exercise. The Petitioners as owners engaged in a redevelopment stand to gain considerably more. But the responsibility of the tenants is squarely that of the Petitioners. That responsibility cannot be passed on to either the BMC or MHADA.

24. We are not inclined to grant the kind of wide relief that is sought in this Petition. We propose to mould that relief by permitting the Petitioners to bring down the structure themselves but with certain relevant directions and caveats. In any case, the documents annexed to the Petition *inter alia* indicate that the demolition must be done in favour i.e., section by section after the necessary re-accommodation or PAAAs are in place. That is an entirely salutary and necessary condition. It cannot be otherwise. Accordingly, we will permit the Petitioners to bring down the building themselves at their own cost but subject to the following directions:

- (a) The Petitioners will first enter into PAAAs with every single one of the tenants/occupants at least as certified by MHADA. There may be more. There cannot be less.
- (b) Mr Khandeparkar for the Petitioners states that there are already 13 PAAAs. As we do invariably, we insist that all PAAAs be on exactly the same basis and on parity. We clarify that this means that all residential tenants/occupants will get PAAAs in parity with all other residential occupants and all commercial occupants/tenants will also be treated on parity with other commercial occupants/tenants.
- (c) On instructions, Mr Khandeparkar states that all tenants will receive redeveloped premises on an ownership basis. This statement is noted and accepted. This is because the Petitioners proposed to utilise incentive FSI. This is noted.

- (d) The Petitioners must share the details of the planned evacuation of the building with all occupants/tenants yet continuing in the building. Their consent is not necessary. They need to be informed. They will be given sufficient time of at least two weeks, preferably more, to vacate with their belongings.
- (e) If there is any difficulty in evicting individual occupants/ tenants, the BMC and MHADA will render assistance in accordance with law.
- (f) No disputes with individual occupants will come in the way of the pulling down of the structure. This is necessary because if any particular tenant/occupant claims that he or she should be on the MHADA certification list, then that dispute may be taken in an appropriate proceeding. All that this means is that the Petitioners will have to provision for such a claimant being found eligible for re-accommodation.
- (g) If any occupants/tenants raise a dispute, then the transit rent due to that person is not to be withheld by the Petitioners but deposited with MHADA. This will be for 11 months' transit rent in advance.
- (h) The Petitioners must be able to establish that not only are the PAAs in place but that sufficient transit rent has been made available to at least or minimally the tenants/occupants in the MHADA certification list.
- (i) This does not mean that prior permissions of either MHADA or the BMC are required but MHADA and

the BMC are certainly required to check that the PAAAs and transit rent provisions are indeed in place and have been implemented.

- (j) The Petitioners must then with their structural consultants/architects submit to both the BMC in the relevant department and to MHADA a specific plan for the bringing down of the structure. If this is already included in the IoD then it need not be repeated. If the documents on which the IoD was issued do not clearly indicate or spell out the systematic pulling down of the structure, then we allow the Petitioners the liberty of submitting an additional plan for demolition of the building.
- (k) In doing so, the Petitioners must ensure that they put in place adequate safety precautions such as the required barricades or safety netting so that there is no risk to others on the public street.
- (l) We clarify by virtue of this order that it is the Petitioners alone who will bear responsibility for any falling debris or any untoward incident in the course of demolition.
- (m) The officers of the BMC and MHADA are not to be held liable for this.
- (n) It is open to officers of MHADA and the BMC to be present on site if not throughout then at least on a periodic basis to supervise the demolition work.

- (o) Once the building is completely demolished, the Petitioners will make a report to that effect to both MHADA and the BMC.
- (p) The Petitioners may then proceed with the redevelopment in terms of the Petition after permissions are already obtained.
- (q) They will be at liberty then to also seek further permissions as may be required in law.

25. We conclude this by expressing our concern about three aspects of the matter: first, the number of tenants involved; second, the fact that this matter has been pending for a very long time; and third, that the building itself is so very old.

26. We say this because we would impress upon both the BMC and MHADA the need to urgently process in accordance with law and subject to all other compliances, all applications that are made by the Petitioners. Leaving aside the interest of the Petitioners, these applications are in the interest of the tenants/occupants and any delay in processing these applications by the authorities should not harm or come at the cost of these tenants/occupants.

27. We do not believe further orders are required at this stage. However, we give parties liberty to apply should there be any difficulty.

28. The Petition is disposed of in these terms and rule is made absolutely accordingly.

29. There will be no orders as to costs.

(Kamal Khata, J)

(G. S. Patel, J)