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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 954 OF 2024

Association of Tenants of Laxmi Bhuvan (Prop) & ...Petitioners
Ors

Versus

Municipal Corporation of Greater Mumbai & Ors ...Respondents

WITH

WRIT PETITION NO. 1241 OF 2024

Laxmi Associates & Ors ...Petitioners

Versus

Municipal Corporation of Greater Mumbai & Ors ...Respondents

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Mr Shanay Shah, *with Amogh Singh, Saurosh Pathale, Nimish
Lotlikar & Purva Naik, i/b Law Origin, for the Petitioners in
WP/954/2024.*

Mr Jitendra Damani, *for the Petitioner in WP/1241/2024.*

Mr Atul Damle, Senior Advocate, *with Pooja Yadav, for the
Respondent-MCGM.*

**CORAM G.S. Patel &
 Kamal Khata, JJ.**
DATED: 20th March 2024

PC:-

1. The Brihanmumbai Municipal Corporation (“**BMC**”) informs us that the landlords represented by Mr Damani had indeed

submitted a proposal. A copy is with Mr Shah for the Association. It appears that there is a proposed change of architect or consultant and the process at the municipal level is at that stage.

2. Mr Shah says that from even a cursory look at the proposal it appears that the residential tenants have been, as he puts it, “wiped out”. He explains that in the development proposal only a few commercial tenants have been shown as proposed to be accommodated. There is no proposal whatsoever in regard to the residential tenants.

3. But this is consistent with at least one (but not both) of Mr Damani’s submissions that not one of these persons in residences is actually a tenant. We noted on the last occasion that the landlord seems to have taken several interesting stands in this regard. On the one hand he claims they are not tenants. On the other, there are 50 eviction suits on the ground of ‘bona fide requirement’, which presupposes the existence of tenancies.

4. We can only now leave it to Mr Shah’s clients, the Association or the individual tenants represented by that Association to make an appropriate representation to the BMC. The reason we are saying this is that there are provisions in the Mumbai Municipal Corporation Act 1888 (“**BMC Act**”) which inter alia provide for the reconstruction and redevelopment of buildings while preserving the rights of various classes of occupants including, specifically, tenants. We had occasion to examine this branch of the law fairly recently in our judgment in *Chandralok People Welfare Association v*

State of Maharashtra.¹ We held that tenancies are not extinguished by redevelopment. But there is no concept in law of a tenanted building being pull down and left in that condition without a redevelopment proposal for an indefinite period. If there is not a redevelopment proposed by the owner landlord consistent with the provisions of Maharashtra Regional Town Planning Act 1966 (“**MRTP Act**”) and inter alia Chapter XII of the BMC Act, then there is a statutory protection afforded to tenants to apply for reconstruction (but not redevelopment of the structure in question) inter alia under Sections 354 and 499 of the BMC Act.

5. We are today not deciding the rival contentions or the controversies as between the landlords and the tenants. For obvious reasons we cannot. We are only at the stage of a municipal action. The reason being that Writ Petition No 954 of 2024 filed by the Association seeks a mandamus to set aside notices issued by the BMC under Section 354 of the BMC Act. A copy of that notice is at Exhibit “A”. The question therefore was whether the building is so dilapidated that it needed to be pulled down as being the C1 category.

6. In another recent judgment *Sakharam Shankar Navasare and ors v State of Maharashtra and Ors*² we looked in depth at the entire scheme of the Technical Advisory Committee (“**TAC**”) guidelines. We held that these recommendations of the TAC do not decide rights. A Writ Court will not sit as a Court of First Appeal against

1 2023 SCC OnLine Bom 2300.

2 2024 SCC OnLine Bom 767.

recommendations of a TAC. A Writ Court will not substitute its decision on technical aspects as to structural stability.

7. The only reason for seeking its relief is the apprehension and anxiety that on demolition the tenancy will be extinguished. That is not the law. There are sufficient pronouncements of the Supreme Court. There are statutory protections in the Maharashtra Rent Control Act 1991 (“**Rent Act**”). As we noted there are statutory protection even in the BMC Act. We examined and noted these in *Chandralok* and *Navasare*.

8. We should not be misunderstood as having dismissed the Petitions filed by the tenants. We are merely disposing it of but keeping their contentions as to their tenancies and their entitlements to a protection of those rights from the Municipal Corporation either in the course of redevelopment or by means of reconstruction in accordance with law. Under no circumstances will we permit the landlord to argue before this Court or any other Court that the tenants’ rights have been extinguished or held not to exist only because of the order that we are making today. In fact, to the contrary, we clarify that our order today protects and recognises those rights and is subject to appropriate orders of the Court of competent jurisdiction. Until such orders are obtained these rights cannot simply be decided unilaterally by a landlord let alone by a Writ Court.

9. The Petition is therefore disposed of with these observations.

10. The companion Writ Petition No 1241 of 2024 is filed by Laxmi Associates, the landlord of the building. It has a solitary prayer which runs for an entire page and also seeks that the TAC report and the notices be quashed and set aside. The Petition is entirely infructuous in light of what we have just observed and in view of Mr Damle's statement that there is a redevelopment proposal that has been filed with the BMC. No orders are required in the Laxmi Associates Writ Petition which is disposed of.

11. The question is of vacating the structure. At the cost of repetition we clarify that vacating the structure and pulling down the building does not extinguish a tenancy either residential or commercial. Obviously, the redevelopment proposal requires the process of area measurement to be undergone. Even this aspect of the law is covered by our judgment in *Hind Rubber Industries Pvt Ltd v State of Maharashtra*.³ The MCGM must call upon the owner developer to submit an area statement. This may be done on a without prejudice basis. We fully anticipate that in light of Mr Damani's advice and the actions in these 50 suits that area statement is likely to be most interesting. We permit the 1st Petitioner Association of tenants (and it makes no difference to us that it is unregistered) to independently submit that area statement to the BMC in view of these disputes. The BMC will then have to verify and measure those areas and this we mean an actual measurement plus a reconciliation with BMC records (including assessment record and plans if any are available). We make it abundantly clear that all future actions will be guided by not what

3 2022 SCC OnLine Bom 1640 : (2023) 1 Bom CR 342.

either the landlord or the tenant says in regard to the size or the area of an individual tenement only by the municipal certification of that list. By this we mean it is for the BMC to actually measure the area under occupation. If there is a dispute about the existence or non-existence of a tenancy the BMC is not required to enter into that controversy. If it does so, it would be acting without jurisdiction. The BMC is concerned with the physical area of the occupancy, not the juridical relationship attached to or governing that occupancy.

12. All contentions in the eviction actions are expressly kept open.

13. Both Petitions are disposed of in these terms.

14. Since there are residential structures and residential occupancies, we will permit the persons in occupation time of three months to vacate on condition that they do not seek an extension of this time. Each of these occupants will necessarily assume responsibility for that continued occupation.

(Kamal Khata, J)

(G. S. Patel, J)