

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3259 OF 2023
WITH
CONTEMPT PETITION (L) NO. 20622 OF 2023
IN
WRIT PETITION NO. 3259 OF 2023

Vadilal Kunwarji Gada & Ors ...Petitioners
Versus
The Brihanmumbai Municipal Corporation & Ors ...Respondents

Mr Shoaib Menon, with Ibrahim Menon, for the Petitioner.
Mr Rohaan Cama, with Pankaj Pandey & Smit K Nagda, for
Respondent No 2.
Mr Dharmesh Pandya, i/b Kurdukar Associates, for Contemnor No 4
in CONPL/20622/2023.
Mr Sukanta Karmakar, AGP, for the Respondent-State.
Ms Rupali Adhate, with Pooja Yadav, for the Respondent-MCGM.

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CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 30th January 2024

PC:-

1. The Petition is a complete misadventure. It is filed by two tenants. They are not the owners of this property called Prabhudas

building at Saint Xavier School Road, Vile Parle (West), Mumbai 400 056. The prayers in the Petition assail a takedown notice of 13th June 2022 and whether directly or indirectly assail a report of the Technical Advisory Committee (“TAC”), as can be seen from prayer clause (b). The only two final prayers in the Petition are prayer clauses (a) and (b), spread over five pages, from page 38 to 41.

They read thus:

“(a) that this Hon’ble Court may be pleased to issue a Writ of Mandamus or any other proper Writ, order or direction calling for the records and proceedings and examining the legality validity and propriety of the action of issuing the Impugned Notice No. KW/354 (Pull Down)/275/BF/AE-IV/71 dated 13/06/2022 of the Designated Officer (Executive Engineer [Building & Factory] K/West Ward) of the Respondent No. 1 Corporation at Exhibit ‘N’ to the Petition and the acts of disconnecting the electricity and water to the said building and issuing of erroneous Area Certificates i.e. Area Certificate No. KW/90/71/OD/BF/AE-IV dated 29/05/2023 at Exhibit ‘R’ to the Petition; and Area Certificate No. KW/127/71/OD/BF/AE-IV dated 09/06/2023 at Exhibit ‘S’ to the Petition and the issue of Letter bearing No. Dy.Ch.E/BP/1454/WS-1 dated 24/05/2022 issued by the Chairman of TAC at Exhibit ‘M’ to the Petition; and TAC Report bearing No. Dy. Ch. Engr. (B.P.)/4122/W.S.-I dated 27/08/2021 at Exhibit ‘E’ to the Petition and this Hon’ble Court may be further pleased to direct the officers of the Respondent No. 1 Corporation to restore the electricity and water to the said building being Building known as 9A/9B, Prabhudas Building, having A-Wing (being Ground Floor + 2 Floors) & B-Wing (being Ground Floor + 2 Floors + 3 Part Floor), standing on plot bearing City Survey Title Number Vile Parle No. 3 - 49D /

Part C (Ulpin No. 87943288202), admeasuring 887.90 square meters, St. Xavier School Road, Vile Parle (West), Mumbai - 400 056 and allow the Petitioners to repair the said building.

(b) that after examining the legality and validity and propriety of the Impugned Notice No. KW/354 (Pull Down)/275/BF/AE-IV/71 dated 13/06/2022 of the Designated Officer (Executive Engineer [Building & Factory] K/West Ward) of the Respondent No. 1 Corporation at Exhibit 'N' to the Petition under the provisions of Section 354 of The Bombay Municipal Corporation Act, 1888 calling upon to vacate and pull down the said building being Building known as 9A/9B, Prabhudas Building, having A-Wing (being Ground Floor + 2 Floors) & B-Wing (being Ground Floor + 2 Floors + 3 Part Floor), standing on plot bearing City Survey Title Number Vile Parle No. 3 - 49D / Part C (Ulpin No. 87943288202), admeasuring 887.90 square meters, St. Xavier School Road, Vile Parle (West), Mumbai - 400 056 and the erroneous Area Certificates issued being i.e. Area Certificate No. KW/90/71/OD/BF/AE-IV dated 29/05/2023 at Exhibit 'R' to the Petition; and Area Certificate No. KW/127/71/OD/BF/AE-IV dated 09/06/2023 at Exhibit 'S' to the Petition and the issue of Letter bearing No. Dy.Ch.E/BP/1454/WS-I dated 24/05/2022 issued by the Chairman of TAC at Exhibit 'M' to the Petition; and TAC Report bearing No. Dy. Ch. Engr. (B.P.)/4122/W.S.-I dated 27/08/2021 at Exhibit 'E' to the Petition, this Hon'ble Court may be pleased to declare the same as bad in law and quash the same and direct the officers under employment of the Respondent No. 1 Corporation to do their duties in accordance with law and allow the Petitioners to repair the said building and at the same time take physical measurements of the flats of the Petitioners."

2. Knowing that the law on the TAC is against them, it is now attempting to change the colour of the Petition by saying that there is a dispute about area statements. That is not the principal frame of prayer clauses (a) and (b). That cannot be the subject matter of writ jurisdiction. A dispute between a tenant and a landlord about the area that was occupied by the landlord is a factual decision which we cannot entertain. If the tenants have an issue regarding what the actual area is, or should be shown as, the remedies are clear in law, and they are entitled to avail of those. They will undoubtedly have sufficient documentation, including, not least of all, municipal assessment records which will establish one way or the other. We are not in our writ jurisdiction going to entertain fanciful claims for larger areas. We are shown photographs of the building. It is entirely evacuated. It is wholly uninhabitable. More than anything else, this now poses a serious danger to others in the vicinity.

3. Our recent order of 23rd January 2024 in Writ Petition (L) No 836 of 2024, *Agra Buildings Tenants Occupants Association v Municipal Corporation of Greater Mumbai and Ors*,¹ will substantially cover the principles in law. That also was a question of a building and its structural condition. Paragraphs 6 to 11 and 13 to 15 read as follows:

“6. On considering this material and on the basis of its independent assessment, the TAC concluded that the building was indeed reparable but by demolishing and vacating some more distressed portions of it. Consequently, the TAC categorized the building as C-2A. But the TAC noted that these repairs had to be done urgently. It said that

1 2024:BHC-OS:1385-DB

if these repairs were not done in six months, the building would fall in to the C-1 category.

7. There then followed on 29th December 2023 the impugned notice at Exhibit ‘P’ at page 88. This required the building to be pulled down entirely. It was an order under Section 354 of the MCGM Act.

8. The reliefs in the Petition are firstly to quash this notice of 29th December 2023 and secondly, to stay its operation. The third prayer clause (c) is for an extension of time to these tenant Petitioners to carry out repairs.

9. The entire structure of the TAC now requires, in our view, a re-examination. It is being widely misused and it is being used particularly to obliterate the rights of owners of the property. The entire submission seems to be that an owner cannot re-develop his or her own property and enjoy the benefits of fruits of re-development and development potential without the consent of tenants. This is being done despite the fact that tenancies are in no way adversely affected by either reconstruction or redevelopment. That is settled law by a judgment of the Supreme Court apart from the fact that provisions of The Maharashtra Rent Control Act, 1999 and the MCGM Act itself protect these very rights.² In other words, these low rent tenancies are effectively usurping the rights of property owners. No tenant ever offers to purchase the property itself.

10. The TAC began with a set of guidelines issued as an interim order by this Court in 2014 in a Writ Petition filed by the Municipal Corporation of Greater Mumbai (“MCGM”) against the State of Maharashtra.³ The MCGM thought it fit to adopt these guidelines and to

² *Shaha Ratansi Khimji & Sons v Kumbhar Sons Hotel Pvt Ltd*, (2014) 14 SCC 1. *V*

³ Interim Order dated 23rd June 2014 in Writ Petition No 1080 of 2015, *Municipal Corporation of Greater Mumbai v State of Maharashtra*.

incorporate them as part of its policy. This is why when that Petition came up for final disposal before a Bench of AS Oka J, (as he then was) and RI Chagla J on 28th February 2018, the Court commented that nothing could now be done in regard to the guidelines because these were now part of the MCGM policy, but it did say that no Court could have entered the realm of policy and frame these guidelines in 2014 to begin with. That crossed the line between judicial functions and executive functions and was in violation of established principles and the doctrine of separation of powers.

11. What has happened after that is even more peculiar. Now the entire TAC set of guidelines has led to people believing that these are matters of right and that Writ Courts can somehow sit as if in first appeal from recommendations of the TAC. In other words, the expectation now is that a Writ Court in exercise of its jurisdiction under Article 226 of the Constitution of India will decide which of several competing reports to choose and will pronounce on the structural stability of a building. To put it bluntly, that is wholly untenable. It borders on the absurd. The purpose of creating the TAC was to ensure that rapacious landlords did not in alleged connivance with MCGM officers pull down perfectly sound structures. But we have every reason now to question the premise of this to begin with especially in tenanted structures because we do not see why the owner of a property needs to wait for a building to become dilapidated to propound a proposal for redevelopment, if that is his right and is part of his right to the enjoyment and the full benefit of ownership of the property in question. In a fit case, we may need to revisit this entire issue.

13. But what is the Petitioner's complaint? They say that they have carried out some repairs. At least one correspondence at 96 from the Petitioners alleges that the

building is perfectly sound and has become strong and stable. The photographs annexed to the Petition including those at pages 60, 62 and 63 plainly indicate to the contrary. What are the repairs that have been carried out? The Petition itself does not elucidate.

14. Mr Waghmare learned Advocate for the Respondent MCGM has instructions from Mr Subodh Bamborde, Jr Engineer (Bldg & Factory Dept) 'A' Ward, to say that the only so-called repairs that have been carried out are the installation of electric meters (and photographs are helpfully provided at pages 64 and 65) and some propping. Faced with this what the Petitioners really say is that it was not possible to carry out repairs within six months and therefore their request for a further extension of time should be granted.

15. We ask: At what cost? At whose cost? The rights of the property owner are one thing. But there is also to be considered the fact that six months have passed without any significant work other than electrical meters and some propping. If this building on the busy Mahatma Gandhi Road collapses, the consequences could be catastrophic not just for the Petitioners but for others in the city and most particularly for MCGM officers. It is well known that whenever a building collapses the first thing that happens is that FIRs are filed against the property owner and MCGM officers. Nobody ever takes actions against the tenant although that tenant has claimed to have carried out "repairs".

4. In that case, we also rejected the plea for an extension of time to vacate and in the meanwhile to restore power and water connections. We allowed in paragraph 21 the Municipal Corporation of Greater Mumbai ("MCGM") officers to enter the premises for

the purpose of area measurement. We make that allowance here as well. The MCGM officers are at liberty to inspect the building for the purposes of area measurement or for such other purposes as the MCGM officers think fit.

5. The ad-interim order of 26th June 2023 read thus:

“1. Mentioned. Not on board. Upon mentioning, taken on production board.

2. It is necessary that the respondent no.1-Municipal Corporation files its reply in this matter in order to clarify the position of the petitioner no.2 as tenant or otherwise. This is all the more necessary because Municipal Corporation has issued Area Certificate showing the petitioner no.2 to be the tenant and subsequently, the Municipal Corporation issued two Area Certificates, which did not show the petitioner no.2 to be tenant and name of the petitioner no.2 did not figure in the subsequent area statements.

3. Learned counsel for the respondent no.1-Municipal Corporation seeks one week's time to file reply clarifying the issue and states, on instructions, that, for one week from today, the respondent no.1-Municipal Corporation would not act upon the notice issued for demolition. This statement is accepted till the next date.

4. It is clarified that further occupation of the building by the petitioners, till the next date, shall be at their own risk.

5. Stand over to 5th July 2023.”

6. This argument about area statements was raised there, although the order in question did not address the frame of the

prayers in the Petition. As we have noted from prayer clauses (a) and (b) set out above, it is only at the end of prayer clause (b) that there is some reference to an area certificate. That area certification has nothing to do with structural condition. It is preposterous to suggest and cannot be accepted that a tenant's area statement will somehow determine whether a dilapidated and danger structure continues. From a public perspective that would be thoroughly irresponsible, and we have no hesitation in comprehensively rejecting any such submission. The fact that there is a dispute in regard to the area of the tenancy is not a reason to allow a dilapidated and dangerous building to continue. The categorization as C-1 clearly indicates that the building is not only uninhabitable, in this case not inhabited, but is in ruinous and dangerous condition. Private interests of tenants cannot be allowed to compromise other settled rights including the public responsibility of the MCGM in regard to safety.

7. The rights of tenants are adequately protected in law, both under the Maharashtra Rent Control Act, 1999 and under the Mumbai Municipal Corporation Act, 1888. There is absolutely no reason to keep re-agitating this theory that a tenant has right superior to that of a landlord or that until the area certification is to the tenant's satisfaction, nothing can be done to the building.

8. In any case, there is also a dispute about the Petitioners' claim to tenancy. Mr Cama for the 2nd Respondent, the owner of the building does not even accept that the Petitioners are tenants to begin with. Obviously, the Petitioners will need to establish their claim to tenancy in a Court of appropriate jurisdiction. We have not

in this order accepted the Petitioners' claim or assertion that they are tenants.

9. The ad-interim order of 26th June 2023 is vacated.

10. The Petition is rejected. There will be no order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)