

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1869 OF 2024

Chembur Star View CHS Ltd. ...Petitioner
Versus
Municipal Corporation of Greater Mumbai & ors. ...Respondents

**Mr Saket Mone, a/w Mr. Abhishekh Salian i/by Vidhii Partners for
the Petitioner.**
Ms. Meena Dhuri, a/w Mr. R Hajare for the Respondent - MCGM.
Mr P R Pdenekar, Asstt. Entineer (B & F) M/W Ward present.

CORAM **M.S. Sonak &
Kamal Khata, JJ.**
DATED: **05th July 2024**

PC:-

1. Heard the learned counsel for the parties.
2. The Petitioner seeks a writ of mandamus directing the MCGM to enforce its own Notice dated 5th October 2023 issued under Section 354 of the Mumbai Municipal Corporation Act ("the MMC Act").
3. Mr. Saket Mone, learned counsel for the Petitioner, points out that all the occupants of the building, which is ordered to be demolished, have vacated, but only one of the occupants, the

Christian Faith Centre on the ground floor, continues to stay put and is resisting the implementation of the MCGM's Notice dated 5th October 2023.

4. The record bears out that the Christian Faith Centre had instituted Writ Petition No.606 of 2024 before this Court to challenge the MCGM's notice dated 5th October 2023 and the classification of this building as C-1 category by the Technical Advisory Committee (TAC). However, by a detailed speaking order dated 15th February 2024, Writ Petition No.606 of 2024 was dismissed. While dismissing the Petition, this Court observed that the Christian Faith Centre could not even establish its rights to the premises it occupied.

5. Despite the dismissal of Writ Petition No.606 of 2024 and further, despite the MCGM's own Notice dated 5th October 2023, since there was no implementation, the Petitioner has instituted the present Petition.

6. Mr. Saket Mone pointed out that even the TAC report states that this building is in dilapidated condition, and therefore, it was classified as a C-I category.

7. On 17th April 2024, Mr. Kunal Waghmare, who appeared for the MCGM, informed this Court that action was being taken on the next day, 18th April 2024. Therefore, the matter was listed on 26th April 2024 to report compliance.

8. This matter could be taken up only on 1st July 2024. On this date, we enquired from the learned counsel for the MCGM about the status of the action pursuant to the statement made on 17th April

2024. The matter was further adjourned to 3rd July 2024 to enable the learned counsel for the MCGM to obtain instructions on why the statement made before this Court was not complied with and the timeline within which such statement could now be complied with.

9. In response, the MCGM filed an Affidavit with us. The contents of paragraphs 2 to 6 of this Affidavit are transcribed below for the convenience of reference:-

*“2. I say that earlier this Respondent Office staff had arranged further action of disconnection of electricity and water supply in view of Notice U/s. 354 of MMC Act U/No.ACM/W/OD/455/B&F DTD. 05.10.2023 on 18.04.2024 and visited petition premises on 18.04.2024, when electricity and water connection was disconnected on 18.04.2024 with the help of Chunabhatti Police station. Herewith annexed and attached is copy of police memo, disconnection order & Photographs dtd. 18.04.2024 at **Exhibit ‘1 colly’**.*

*3. I say that again on 22.04.2024, letter addressed to Chunabhatti Police Station for getting the evacuation action as per guidelines in W.P. No.1080 of 2015. However, Sr. Police Inspector, Chunabhatti Police station informed to addressed letter to Dy. Police Commissioner of Police for providing police force. Hence, as per their direction, these Respondents again sent intimation for getting police force on 30.05.2024 for 11.06.2024. Herewith annexed and attached is copy of intimation dtd. 22.04.2024 & 30.05.2024 & guidelines for C1 catagory buildings at **Exhibit ‘2 Colly’**.*

4. I say that again on 08.06.2024 notice u/s.

*488 of MMC Act U/No.ACM/W/OD/235/B & F/DTD. 08.06.2024 was issued and served to the Chairman/Secretary and occupier of ground floor premises (Christian Faith Centre). However, the ground floor premises occupier (Christian Faith Centre) failed to vacate the premises. Herewith annexed and attached is copy of notice u/s. 488 of MMC Act dtd. 08.06.2024 at **Exhibit '3 colly'**.*

*5. I say that hence on 11.06.2024 these office staff alongwith Chunabhatti Police force visited petition premises on 11.06.2024, however, due to strong oppose from the ground floor tenants i.e. (Christian Faith Centre) & local political parties, further action of evacuation can not be taken. Herewith annexed and attached is copy of police memo & photographs dtd. 11.06.2024 at **Exhibit '4 colly'**.*

6. I say that in view of above this Hon'ble Court may be pleased to pass appropriate orders for giving direction to Chunabhatti Police station for taking evacuation action for removing persons. I say that these Respondents will provide logistic support for removing the belongings of the occupier after they are removed by the police."

10. The above Affidavit and its contents make a sorry reading. Though the MCGM made attempts to execute its Notice dated 5th October 2023, such attempts were thwarted on account of apparent non-cooperation from the police coupled with "*strong opposition from the ground floor tenants i.e. (Christian Faith Centre) & local political parties*".

11. Neither the Christian Faith Centre nor the local political parties have any business in taking the law into their own hands.

Moreover, they have no business to oppose, by using force, the execution of lawful orders made by the MCGM. The material placed on record by the Petitioner and the MCGM establishes that the building in question is in dilapidated condition and is, therefore, categorised as C-I category. By employing such unlawful force, neither the Christian Faith Centre nor the local political parties facilitate any disaster that would result from the collapse of such a building. In these circumstances, even the Chunabhatti Police Station was duty-bound to provide proper protection and assistance so that the MCGM could execute its order.

12. We have perused the communication addressed by the Senior Police Inspector of the Chunabhatti Police Station on 27th April 2024. The Senior Police Inspector virtually acknowledges that the building in question is extremely dilapidated. He also notes that the police force was supplied, but possibly the same was insufficient. Surprisingly, this Senior Police Inspector then called upon the MCGM to obtain approval from the Commissioner so that a fresh police force could be provided for demolition.

13. The Christian Faith Centre had already filed a Petition in this Court to question the action of the MCGM. Having lost its action, the Christian Faith Centre had no business to take the law into its own hands and using criminal force to oppose the implementation of the demolition order. Similarly, it is for the Chunabhatti Police Station to complete its internal formalities and grant additional police force to the MCGM to implement its lawful orders. The matter cannot be delayed by requiring the parties or MCGM to approach the Commissioner of Police in such matters. The Senior Inspector of Police of the Chunabhatti Police Station should have

appreciated that such inaction on his part virtually obstructed the MCGM from also enforcing the order made by this Court in this matter.

14. In view of the above, we now direct the Chunabhatti Police Station to provide full police protection and support to the MCGM so that the MCGM can execute its Notice dated 5th October 2023 issued under Section 354 of the MMC Act. The MCGM, along with protection from the Chunabhatti Police Station, should implement its Notice dated 5th October 2023 as expeditiously as possible and, in any event, on or before 19th July 2024.

15. With the above directions, we dispose of this Petition and direct the MCGM to file a compliance report along with photographs by 26th July 2024. A copy of this compliance report, along with photographs, must be furnished to the Petitioner before it is filed in this Court.

16. All concerned parties, including the Senior Police Inspector of the Chunabhatti Police Station, must act upon an authenticated copy of this order.

(Kamal Khata, J)

(M.S. Sonak, J)