

Arun Sankpal

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2870 OF 2025

Sabira Nasibdar Khan & Ors

..Petitioners

Versus

Vasai Virar City Municipal Corporation

...Respondent

Mr. D.R. Singh, with Kusum Pandey, for the Petitioner.

CORAM: N. J. JAMADAR, J.

DATED : 4th MARCH 2025

P.C.:

1. The petitioners, who claim to be the tenants and sub-tenants of two chawls named “Chotu Naik Chawl” and “Jagdish Naik Chawl”, situated at Nallasopara (W), District Palghar, have preferred this petition assailing legality, propriety and correctness of a judgment and order dated 6th December 2024 passed by the learned District Judge, Vasai in MCA No. 40 of 2023, whereby the appeal preferred by the petitioners came to be dismissed affirming an order passed by the learned Civil Judge, Junior Division, Vasai, on 8th August 2023 rejecting an application for temporary injunction filed by the petitioners to restrain the respondent-Municipal Corporation from acting upon the notices dated 26th May 2020 and 14th September 2020 to demolish the said chawls as they were in a dilapidated and dangerous condition.

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2. The learned Civil Judge found that the plaintiff nos. 2 to 4 were residing in Chotu Naik Chawl, which was categorized by the Technical Advisory Committee (“TAC”) in C-1 category, which required immediate evacuation and demolition. Plaintiff nos. 1 and 5 failed to *prima facie* establish that they were in occupation of a particular room in the said chawl. Thus, reliance by the plaintiffs on a report of an architect showing that the chawls were suitable for occupation after repairs was of no avail. Therefore, since the rights of tenants were protected even in the event of demolition of the chawls which were dilapidated and dangerous, no case for grant of injunction was made out.

3. The learned District Judge found no error in the exercise of discretion by the Trial Court. The learned District Judge noted that the Structural Audit Report submitted by the plaintiff’s architect contains a disclaimer that the auditor would not be responsible for any sudden fall or sink or tilt of any part of the structure in respect of which the said report was submitted.

4. Mr. D.R. Singh, learned Counsel for the petitioners, submitted that the learned District Judge proceeded on an incorrect premise. The said disclaimer was part of a general note which was a part of the standard form of the Structural Audit Report. The Trial Court as well as the Appellate Court did not objectively evaluate the material on record. Therefore, the impugned order deserves to be interfered with.

5. I am unable to persuade myself to agree with the submissions of Mr. Singh. The Trial Court has recorded a categorical finding that “Chotu Naik chawl” has been categorized C-1 category by the TAC. The inquiry by the Civil Court in the said categorization by the TAC is of a very limited nature. The Civil Court cannot sit in appeal over the assessment of the TAC. What the Court can examine is the correctness of the decision making process and not the merits of the decision.

6. Therefore, *prima facie*, in the absence of any cogent and convincing material, a Private Structural Audit Report cannot command primacy over the report of TAC.

7. Furthermore, the rights of the tenants and occupants of a dilapidated structures are protected under the municipal law. Their tenancy rights, generally, do not extinguish with the demolition of the structure which poses grave risk to the life and property of the occupants and neighbors.

8. Concurrent *prima facie* findings regarding the nature of the structures and legality and validity of the action by the Municipal Corporation do not merit interference by this Court. Having considered the material on record, this Court does not find that the Courts below have exercised the discretion in such manner as to warrant interference in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

- 9.** I am, therefore, not inclined to entertain the Petition.
- 10.** The petition stands dismissed.
- 11.** No costs.

[N. J. JAMADAR, J.]