

lresh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO. 323 OF 2025
WITH
INTERIM APPLICATION NO. 8462 OF 2025**

**Eqbal @ Bali Begum Salahuddin
Pasha**

.....Appellant

Vs.

**Brihanmumbai Municipal Corporation
(MCGM)Thr. The Designated Officer
L-Ward**

.....Respondent

**Mr. Raj. K. Awasthi a/w Ms. Bushra Sayed i/b Ms. Pragya Mishra
for the appellant**

**Mr. Om Suryawanshi i/b Ms. Komal PUnjabi for respondent-BMC
Mr. Ashok Tastode, JE (B&F) 'L' Ward**

CORAM : GAURI GODSE, J.

DATE : 2nd JULY 2025

ORDER:

1. Heard learned counsels for the parties. This appeal is filed by the plaintiff to challenge refusal to grant ad-interim relief. The suit is filed to challenge notice under Section 354 of The Mumbai Municipal Corporation Act ('the said Act').

2. Learned counsel for the appellant submits that the appellant has submitted a structural stability certificate which records a conclusion that the plaintiff's structure is C-2 category. He submits that the conclusion in the structural stability certificate says that the plaintiff's structure is safe and stable and fit for human habitation. He submits that the owner of the land and building submitted structural stability certificate which categorizes the building G+2 as C-1 category. He, however, submits that the appellant's structure is a separate unit numbered as A-1 and thus, the report submitted on behalf of the land-owner does not pertain to the plaintiff's structure. He, thus, submits that when there are conflicting reports, the Corporation is required to take opinion of the Technical Advisory Committee ('TAC'). He relies upon clause 1.05 of the guidelines for declaring private and municipal buildings as C-1 category. He submits that clause 1.05 of the guidelines provides that if the owners or the occupants submit conflicting structural audit reports regarding the status of the building, the matter shall be referred to TAC.

3. Learned counsel for the appellant, thus, submits that the

Corporation without referring the matter to the TAC, issued notice under Section 354 of the said Act calling upon the plaintiff to vacate the premises.

4. Learned counsel for the Corporation submits that the structural stability certificate submitted by the owner of the building pertains to the entire building known as Gomes Mansion CTS No. 511(pt), Structure 223 as described in Annexure-2 Proforma-B of the structural stability certificate. He submits that the structural stability certificate pertains to G+2 storey. The conclusion in the structural stability certificate given by the owner categorizes the building as C-1 category. Learned counsel for the Corporation submits that the structural stability certificate with regard to only one part of the building cannot be termed as conflicting report. He submits that the plaintiff was called upon to submit structural stability certificate with regard to the entire building to support her contentions that the building is C-2 category. He submits that learned City Civil Court has rightly refused to grant any ad-interim protection.

5. I have perused the papers of the Appeal. Notice under

Section 354 of the said Act is issued on 29th May 2025. The appellant filed the suit to challenge the notice. In the plaint, it is pleaded that Gomes Mansion CTS No. 511(pt), Structure 223 consists of only 21 rooms and out of that 11 rooms were occupied by present landlord and 10 rooms were in possession of the tenants. Paragraph 1 of the plaint further describes that there are three rooms of Ground+2 floor and 18 rooms are Ground+1 floor. The plaint does not describe the plaintiff's structure as any stand alone unit not attached to structure no. 223.

6. The structural stability certificate relied upon by the plaintiff is annexed to the present appeal. The report refers to room no. A1, house no. 223 Gomes mansion. I have perused the report. The report does not reveal that room no. A1 is a separate, stand alone unit. The report also does not refer that entire house no. 223 is audited and the report pertains to the entire structure. The Corporation has relied upon the structural audit certificate submitted by the owner and the same is annexed to the affidavit-in-reply. The report refers to the address of the building as structure 223 consisting of Ground+2 storey. Even the pleadings

in the plaint refers to three rooms of Ground+ 2 floors. Learned counsel for the appellant relied upon a sketch to support his submissions that all the units are separate units. However, the sketch annexed to the appeal does not specify any address or number of floors. Thus, prima facie, there is no material to indicate that the plaintiff's structure is a separate stand alone unit.

7. Learned counsel for the Corporation has thus, rightly relied upon the relevant regulation of the guidelines which requires the Corporation to send the matter to TAC when there are two conflicting audit reports. Thus, at this stage, there is no material produced on record to indicate that there are two conflicting reports with regard to house no. 223 known as Gomes Mansion.

8. By the impugned order, the learned Judge has considered the documents relied upon by both the parties. The learned Judge has observed that no case is made out to grant ad-interim relief based on the facts before the Court at the stage of ad-interim relief.

9. In the absence of any prima facie material to indicate that structural audit report relied upon by the plaintiff is with regard to

the entire house no. 223 or that room no. A1 is a separate unit, I see no reason to grant any protection by relying upon the structural audit report submitted by the plaintiff. Section 353B of the said Act requires the owner or occupier of a building in respect of which, a period of 30 years are completed from the date of completion certificate, permission to occupy the building or its physical occupation, at least 50% of its area, whichever is earlier to submit a structural stability certificates. Section 353 B reads as under:

“353B. Structures Stability Certificate

(1) Every owner or occupier of a building in respect of which a period of thirty years, from the date of—

(i) issue of its completion certificate by the Corporation ; or

(ii) issue of permission to occupy a building under section 353A ; or

(iii) its physical occupation of at least 50 per cent of its built-up area,

whichever is earlier, has expired, shall cause such building to be examined by a Structural Engineer registered with the Corporation for the purposes of certifying that the building is fit for human

habitation (such certificate hereinafter referred to as “the Structural Stability Certificate”). The Structural Stability Certificate issued by such Structural Engineer shall be submitted to the Commissioner.

(2) The Structural Stability Certificate shall be submitted within one year from the expiry of a period of thirty years referred to in sub-section (1), and every ten years thereafter or such earlier period as the Commissioner may determine having regard to the condition of the building and the corrective repairs carried out by the owner or occupier.

(3) Notwithstanding anything contained in sub-section (1), the Commissioner may, at any time, after having recorded the reasons, in writing, direct the owner or occupier of a building, to cause such building to be examined by such Structural Engineer and to submit to the Commissioner, the Structural Stability Certificate, as required under sub-section (1), within the period not exceeding thirty days as specified by the Commissioner, in such direction.

(4) If the Structural Engineer recommends any corrective repairs for securing the structural stability of the building, such corrective repairs shall be carried out by the owner or occupier of a building to the satisfaction of the Commissioner.

(5) Any owner or occupier, as the case may be, who fails to carry out corrective repairs for securing structural stability, within a period of six months from the date of report of the Structural

Engineer, shall be punished with the fine as provided in section 471.

(6) Notwithstanding anything contained in sub-section (5), the Commissioner may, after giving the owner or occupier, a notice in writing, require him to carry out, within the period specified in the notice, corrective repairs for securing structural stability of a building. If the owner or occupier fails to carry out such corrective repairs within the period specified in the notice, the Commissioner may carry out the same and the expenses incurred by the Commissioner on such repairs shall, on demand if not paid within thirty days, be recovered from the owner or occupier as arrears of property tax.

(7) If there is any dispute about the amount of expenses for which demand is made under sub-section (6), an appeal may be preferred to the Chief Judge of the Small Causes Court, but no such appeal shall be entertained by the said Chief Judge, unless

—

(i) it is preferred within twenty-one days from the date of receipt of notice of such demand ;

(ii) the amount for which demand is made is deposited with the Corporation and a true copy of the receipt showing that the amount has been so deposited accompanies the appeal.

(8) In case the appeal is decided in favour of the appellant and the amount of expenses deposited with the Corporation is more

than the amount payable by the appellant, the Commissioner shall adjust the excess amount with interest at 6.25 per cent, per annum from the date on which the amount is so deposited by the appellant, towards the property tax payable by the owner in respect of such building thereafter.]”

The word ‘Building’ is defined in Section 3(s) as under:

“(s) “building” includes a house, outhouse, stable, shed, hut [tank(except tank for storage of drinking water in a building or part of a building)] and every other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatever;”

10. Thus, in view of the definition of the word ‘Building’ and the requirement to submit structural stability certificate as contemplated under Section 353B of the said Act, only based on the structural stability certificate in respect of one unit of a building, the plaintiff would not be entitled to seek any ad-interim relief.

11. I, therefore, see no reason to grant relief at ad-interim stage. Notice of Motion will have to be considered after the reply filed by the Corporation. Learned counsel for the Corporation submits that the affidavit-in-reply to the Notice of Motion shall be filed on or

before the next date.

12. Notice of Motion shall be decided on its own merits, after examining and considering the reply of the Corporation, uninfluenced by the observations made in this order or in the impugned order.

13. For the reasons recorded above, the appeal is dismissed.

14. In view of the dismissal of the appeal, pending applications, if any, are disposed of as infructuous.

15. Learned counsel for the appellant seeks extension of earlier protection to approach the Hon'ble Apex Court.

16. This Court on 4th June 2025 had directed that no action will be taken in respect of the disputed structure till the next date, after recording the appellant's undertaking that if there is any loss of life or any other injury or damage due to the structure collapsing, then the appellant will not hold the Corporation responsible for the same.

17. Learned counsel for the Corporation opposes this prayer on

the ground that the building is in dilapidated condition and if the plaintiff's structure collapses, it is likely to cause damage to the life and structures around the building; hence, the plaintiff be directed to submit an undertaking that if there is any loss to the life and property due to the collapse of the plaintiff's structure, the appellant would take the responsibility for the loss or damage to the life and property.

18. Learned counsel for the appellant states that he will file such an affidavit by tomorrow. Subject to filing such an undertaking, protection granted on 4th June 2025 shall continue for a period of four weeks. It is clarified that if affidavit-cum-undertaking in terms of what is recorded above is not filed and served upon the learned counsel for the Corporation, the protection granted by this order shall stand vacated.

[GAURI GODSE, J.]