

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 674 OF 2025
WITH
INTERIM APPLICATION NO. 38391 OF 2025
IN
APPEAL FROM ORDER NO. 674 OF 2025

Ramesh Jinabhai Waghela

Appellant (Orig.
.. Plaintiff No.3)

Versus

The Municipal Corporation of Greater Mumbai
and Ors.

.. Respondents

.....

- Mr. A.S. Rao a/w. Mr. Ameya Khot, Advocates for Appellant.
- Mr. Sachin Vajale, Advocate for BMC.
- Ms. Anjali Helekar a/w. S.A. Abhyankar, Advocates for Respondent No.3.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 09, 2026.

P.C.:

1. Heard Mr. Rao, learned Advocate for Appellant; Mr. Vajale, learned Advocate for BMC and Ms. Helekar, learned Advocate for Respondent No.3.

2. This is a case where the Appellant / Plaintiff No.3 is arguing issues with which he has absolutely no locus whatsoever. A long rope is given to Appellant / Plaintiff No.3 to argue the present Appeal From Order after which the present order is passed. There are 19 Plaintiffs before Trial Court. Only one of them i.e. Plaintiff No.3 has challenged

rejection of Exhibit “5” Order.

3. Mr. Rao appears for the Appellant. Appellant / Plaintiff No.3 is amongst 36 tenants in the property comprising of a ground + one storey building situated on Final Plot No.664, TPS-III, R M. Bhattad Road, Borivali (West), Mumbai known as ‘Vishnu Niwas’. Admittedly building is constructed prior to 1961 by the landlord. Defendant No.3 in the Suit proceedings is the owner and landlord duly represented by Mr. Abhayankar along with Mrs. Helekar. The building is 62 years old and having seen and weathered several monsoons was categorized in C2-A category requiring major repairs with evacuation pursuant to notice issued by the Corporation under Section 353(B) of Mumbai Municipal Corporation Act, 1888 (for short ‘**MMC Act**’) on 15.09.2021. Series of incidents have happened thereafter.

4. Defendant No.3 owner / landlord carried out Structural Audit which *prima facie* was deemed to be incomplete and lacked Proforma-B prompting a second follow-up notice from the Corporation. Second structural Audit Report dated 17.08.2022 was filed by owner with the Corporation, *inter alia*, reaffirming the status of the building as ‘C2-A’ classification requiring major repairs with evacuation. 36 tenants were housed in the building. Meeting of the tenants with the Corporation fructified delay in repairs and evacuation of the property when some of the tenants consented to contribute Rs.1 lakh each and

called for a detailed repair plan. The Structural Auditor who had given the plan initially called out each of the tenants to deposit of Rs.5 lakhs with the landlord of the building which was not agreed upon. After two years thereafter, the Plaintiffs rather some of the tenants commissioned an independent Structural Audit which once again re-affirmed C2-A classification status. Nothing fructified thereafter save and except making an Application to the Corporation and Corporation granting permission for repairs on 26.08.2022 under Section 499 of the MMC Act.

5. Mr. Rao, learned Advocate for Appellant / Plaintiff No.3 would submit that this Court needs to take into account the fact that repairs commenced with the monies that was collected and contributed by some of the tenants, but nothing fructified thereafter. Corporation had to issue stop work notice and follow-up notice leading to several disputes resulting in intervention of the local MP who at the behest of the tenants convened and appointed another Structural Auditor to prepare SAR who prepared Report dated 05.11.2024. In this Report, it was opined that the tenants had completed the repairs. Since there was a clear dichotomy, the said SAR was referred to the TAC Committee which conducted a thorough an independent Structural Audit through experts and submitted its report classifying the building in C-1 category.

6. The Suit was filed when Plaintiffs received notice under Section 527 of the MMC Act in September 2023 to challenge the further notice issued under Section 354 of the MMC Act. According to Corporation, Structural Audit Report submitted by Plaintiffs had a validity of four months and if structural repairs were not commenced within the said period, the said Report would stand invalidated and invalid leading to further inspection in accordance with law.

7. The TAC Committee Report incidentally classifies the building as 'C1' category requiring immediate evacuation and demolition due to significant loss of structural integrity and strength of the building between 2021 and 2025. In response to the TAC Report, no response was received and some of the tenants namely 19 of them filed the present Suit proceedings together.

8. Interim relief has been rejected by the learned Trial Court by a reasoned speaking order appended at page No.126 of the Appeal From Order.

9. Mr. Rao on behalf of one of the Plaintiff has persuaded me to consider the incidents and events which transpired before passing of the impugned order before the Trial Court during which representation on behalf of Plaintiffs was made.

10. I have persuaded Mr. Rao to argue the issue with respect to the impugned order which has been passed which *prima facie*

juxtaposes the three SAR Reports and TAC Committee Report to arrive at a conclusion.

11. Learned Trial Court has considered the first SAR Report filed by Nilesh Pandit structural consultant of M/s. Space Design and Development which is a detailed Report alongwith the Report prepared by Mr. Pragnesh Oza dated 26.07.2023. It is *prima facie* seen that the TAC Committee Report which is the third Report accepts both the aforesaid Report before carrying out the Structural Audit in respect of the subject building and qualifies that the said building requires immediate evacuation in view of major leakages and dampness in all walls exposed to weather, significant deflection in ceiling slabs which has been *prima facie* observed, absence of plinth protection, cracked flooring, and sagging of roof rafters on the first floor. It is *prima facie* seen from the TAC Report that plumbing pipes are misaligned and broken in several places, external plaster exhibited cracks and signs of leakages and most importantly the common passage on the first floor is severely sagged.

12. When the matter was first mentioned before me in December 2025, grievance of Plaintiff No.3 as Appellant before me was that he was not given a copy of TAC Report. By an order of this Court copy of the said Report was directed to be given to Plaintiff to take appropriate steps.

13. The findings returned in paragraph Nos.9 to 11 are *prima facie* based upon the Reports which are placed before the Court and which are analyzed by this Court and also the subsequent events. It is seen that Plaintiff Nos.1, 2, 4 to 15 and 17 to 19 have already settled their disputes with the Defendant No.3 landlord by filing Consent Terms and vacated the Suit premises i.e. their respective rooms before any untoward incident can happen which is recorded by the learned Trial Court. It is recorded that Plaintiff No.16 could not be present to execute Consent Terms due to his illness. The only person which I may not called minuscule minority either is Plaintiff No.3 before me. He is the only dissenting member. For the last two months adequate opportunity is given to Plaintiff No.3 to challenge the TAC Report but Plaintiff No.3 has not done so. He chooses to argue the matter. *Prima facie* he has not shown any perversity in the TAC Report to me.

14. Today, when the matter is called out, arguments are advanced across the bar on the basis of ad-interim orders passed by the Trial Court without even arguing the merits of the impugned order before the Court. Another submission which is completely irrelevant is made by Plaintiff No.3 is with respect to the status of the land where the building is situated. Mr. Rao has placed before me an order dated 04.02.2026 passed in RTS proceedings by the Sub-Divisional Officer, *inter alia*, with respect to Mutation Entries in respect of the subject land wherein it is stated that the subject land is tribal land and the

original owner not being a tribal would not be entitled to the land as also the building standing thereon and then in the event if said building is demolished, the original owner will not be in a position to reconstruct the same. This submission of Mr. Rao cannot be countenanced for more than one reason. Appellant / Plaintiff No.3 has no locus whatsoever to make the aforesaid submission. That apart, the reasons which are given by the learned Trial Court *prima facie* go to the root of the matter. Because of the aforesaid submission, the said subject suit building which is in a dilapidated state cannot be allowed to be occupied. It is a matter of life and death. The minuscule minority of the dissenting member cannot withhold development especially when Defendant No.3 has taken steps as also to ensure that all tenants will be treated at par.

15. Mr. Rao would submit that Plaintiffs are entitled to alternate accommodation in lieu of their existing premises if they are vacate and they not so offered the alternate accommodation. That right cannot be available to the Plaintiff as a matter of right and all tenants will be treated at par by the landowner / Developer when redevelopment happens.

16. Ms. Helekar, learned Advocate alongwith Ms. Abhyankar appears on behalf of Respondent No.3 – owner informs the Court that as on today the immediate need of the hour is to vacate and evacuate

the building before any untoward incident happens. Despite giving adequate opportunity to Plaintiff, the Plaintiff has not been able to challenge the TAC Committee Report.

17. The owner through his Advocate makes a statement that all tenants will be treated at par in accordance with law in so far as any entitlement in redevelopment on the said land is concerned and no discrimination whatsoever will be made against any of the 36 tenants.

18. In that view of the matter, I am not inclined to accept the submissions made by Mr. Rao and interfere with the reasoned speaking order dated 08.10.2025 passed by the learned Trial Court. The said order is upheld.

19. Needless to state that all contentions of Plaintiffs are otherwise expressly kept open before the learned Trial Court in the pending suit.

20. Appeal From Order is dismissed.

21. Interim Application is accordingly dismissed.

[MILIND N. JADHAV, J.]

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signed by AJAY
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