

(2014) 04 BOM CK 0176

In the Bombay High Court

Case No : Writ Petition No. 794 of 2014, Notice of Motion (Lodging) No. 239 of 2014 in Writ Petition No. 794 of 2014 and Writ Petition (Lodging) No. 707 of 2014

AM Developers

APPELLANT

Vs

The State of Maharashtra and Others
 Mahadeo Hari
Wakde and Others Vs Municipal Corporation of Greater
Mumbai and Others

RESPONDENT

Date of Decision : 11-04-2014

Acts Referred:

Mumbai Municipal Corporation Act, 1888 — Section 354

Citation : (2014) 4 ABR 622 : (2015) 2 ALLMR 569 : (2014) 4 BomCR 698 :
(2015) 1 MhLj 43

Hon'ble Judges : M.S. Sonak, J;Anoop V. Mohta, J

Bench : Division Bench

Advocate : Ravi Kadam, Mr. Venkatesh Dhond, Senior Advocates, Mr. Rohan Kadam a/w. Mr. Vikram Trivedi, Mr. Sunil Trilok Chandani, Ms. S. Chatterjee, Mr. Bharatkumar Jain i/b M/s. Manilal Kher Ambalal and Co. in WP No. 794 of 2014 @ N/M (L) No. 239 of 2014, Mr. Yusuf Khan and Mr. Altaf Khan i/b Ms. Anjali Awasthi in WP (L) No. 707 of 2014, Advocate for the Appellant; Manish Doshi i/b Kookada and Associates for Intervenor, Mr. M.A. Sayyed, AGP for Respondent Nos. 1, 6 and 7, Ms. Jamila Shaikh for Respondent Nos. 9 and 33, Mr. Moinuddin Khan, Mr. Tushar Kochale for Respondent Nos. 11 to 25, Ms. K.M. Lovely for Respondent No. 26, Mr. Ramsuresh Vishwakarma for Respondent Nos. 30, 31, 32 in WP No. 794 of 2014 @ N/M (L) No. 239 of 2014, Mr. D.A. Nalawade, GP for State, Mr. Ravi Kadam, Mr. Venkatesh Dhond, Senior Advocates i/b Manilal Kher Ambalal and Co. for Respondent No. 3 in WP (L) No. 707 of 2014, Mr. S.U. Kamdar, Senior Advocate and Ms. Trupti Puranik for MCGM in WP (L) No. 707 of 2014 and in WP No. 794 of 2014 @ N/M (L) No. 239 of 2014, Advocate for the Respondent

Judgement

Anoop V. Mohta, J.—The owner built the Amar Mahal Building on plot No. 86 & 87 in sub-sector-III at Chembur, Mumbai (The property/premises) in the year 1956-57, which according to the Municipal Corporation, now is in the list of

dilapidated Buildings (C-1 Category) in their Disaster Management Plan, 2012. Therefore, admittedly, three notices (the notices) u/s 354 (The section) of the Mumbai Municipal Corporation Act (MMC Act) issued from time to time, i.e., 11.6.2007, 9.5.2008 and 9.5.2013 to demolish and to vacate, being dangerous and inhabitable property/building. There is no dispute that the Petitioner (in Writ Petition No. 794 of 2014) is the landlord, owner and developer of the premises/property. The Respondents are some of the occupants/tenants. Some of them are the Petitioners in Writ Petition (L) No. 707 of 2014 filed on 13.03.2014.

2. The landlord/owner has prayed to implement the notices" as the structure/premises is in dangerous and dilapidated condition. The occupants, however, are objecting to the same on various grounds, by referring to the various provisions of law which are not sufficient to divert the undisputed position on record and so also the effect and purpose of the section.

3. The learned counsel appearing for the Petitioners-occupants/tenants placed reliance upon various judgments including case of Lalbhai Tricamlal Vs. The Municipal Commissioner for the City of Bombay, . After considering the scheme and purpose of the Section and for it's implementation, it is specified that the premises should be in ruinous condition or likely to fall or in any way dangerous to any person occupying, resorting to, or passing by such structure. That is also subject to a satisfaction of the Corporation and its officers based upon the material available with them. The plain reading of the section contemplates and mandates the Commissioner to remove such structures. The section itself mandates to remove and/or demolish and/or take appropriate steps or action against the "dangerous structure".

4. The Respondent-Corporation's satisfaction, therefore, though based upon various material and/or information, yet some Respondents/tenants are obstructing and preventing the landlord/owner from developing the property. Their entitlement, even if any, as they sought to be contended being a tenant of the premises, is quite limited. There is no bar under any provision that the owner and/or landlord cannot develop such property.

5. The Respondent-Corporation, therefore, considering the position of buildings, has been requesting the landlord/owner and occupants to take steps for safety of the buildings since 2005. Whatever may be the reason, but ultimately the Respondent-Corporation issued first notice on 11.6.2007. The Petitioner/landlord, therefore, even requested the occupants to vacate the property as the buildings are in urgent need of repairs. The permission was also sought to put-up props to support the structure wherever necessary and to erect fence on the plot and put-up cautionary board warning occupants and passersby about the dilapidated condition of the property. They did not support the position. Therefore, second notice dated 9.5.2008 was issued by the Corporation contending that the structure of building is in dilapidated condition and also called upon them to pull down the building. The Petitioner/landlord again requested the occupants to vacate the buildings/property including to the adjacent temporary shed,

outhouse and garages occupants.

6. Based upon some reports obtained by the Respondents/occupants whereby it is mentioned that the structure "is safe and sound to bear design load", they refused to vacate the premises. The disputes/conflicts between the landlord and the tenants therefore, continued. Various meetings took place, even in the year 2011 to settle the matter. The Petitioner/landlord as well as the Respondents-occupants/tenants in fact discussed the terms and conditions and they want to clarify various doubts so that they can cooperate and enter into permanent alternate accommodation (PAA) with the Petitioner/landlord.

7. The landlord/owner, as the settlement could not be proceeded further, again requested to vacate the premises as that is necessary to develop the property by pulling down and demolish the premises in question. Some of the occupants agreed and even vacated. The Respondents/occupants-tenants however, resisted to vacate the premises though expressed their willingness and no objection for the development. As there was no further progress, the Respondent-Corporation issued another notice on 9.5.2013, to all the concerned and directed to pull down the building. The Petitioner, therefore, addressed a letter and pointed out their inability to pull down the structure due to various reasons including "wrongful refusal/failure of the tenant/occupants to cooperate in the demolition process by vacating their respective premises/rooms of the buildings.

8. The Respondent-Corporation directed even to disconnect electricity supply on 11.7.2013 itself. The Respondent-Corporation filed a criminal case against the Petitioner/landlord-owner for not having complied with notice dated 9.5.2013. Respondents/occupant's No. 33 and others filed Suits on 3.9.2011 vide Suit No. 3424 of 2013 and 3425 of 2014, which are pending before the City Civil Court, whereby the prayers are sought to prevent demolition of their property in question. However, the learned Judge not granted any ad-interim relief.

9. The Petitioner/landlord again communicated the position to the Respondent-Corporation about non-cooperation from the occupants/tenants and also referred that they would not be responsible for any loss of the life and danger to the property in the event of untoward collapse of the said building. The Respondent-Corporation on 10.10.2013, gave an opportunity to pull down dilapidated buildings including the adjacent temporary sheds. The Petitioner therefore in above background, in fact, requested the Respondent-Corporation to perform their duty to remove such occupants/tenants from the said premises and to assist the Petitioner/landlord to pull down the said buildings. The Petitioner/landlord, therefore, again received a notice on 29.10.2013 to pull down the buildings in question. The Petitioner ultimately in view of above background, filed this Petition on 13.12.2013 and prayed mainly to complete the action as contemplated u/s 354 of the MMC Act, apart from other reliefs.

10. However, during this period, as offered out of 94 occupants/tenants, the Petitioner/landlord has settled with 63 occupants, before filing of the Petition.

The Petitioner has also settled with other four occupants (Respondent Nos. 10, 34 and 36) after filing of the Petition. At pages 602 & 603, the Petitioner/landlord has given details about occupants of the premises as well as the occupants of shed and area which they are offered them, apart from their other terms and conditions. In order dated 2.4.2014, we have recorded the said statement.

11. The Petitioner/landlord ultimately circulated and put caution notice about the dilapidated condition of the building on 6.1.2014. Remainders were also sent to the Respondents to take action.

12. The matter was also listed before the Court from time to time. Most of the time, it was adjourned for settlement as everybody concerned including the Petitioner/owner, occupants and shed occupiers wants to settle the matter knowing fully undisputed position of the structure as well as its dilapidated condition. Merely because one report placed by the occupants on record to say that the building is safe and sound to bear design load, that itself is not sufficient to overlook the actual and factual position of the buildings as well as consistent notices issued by the Corporation knowing fully the effect of not taking action on such dangerous structures. 63 occupants have settled the matter. Out of 94, 63 are supporting the Petitioner as well as the Respondents. Everybody concerned knew about the nature and dilapidated condition of the building. The dispute even if any, raised with regard to the structure by some of the Respondents/occupants that it is repairable and could have been repaired just cannot be accepted, at this situation and on the undisputed position on record. It is even difficult even for the occupants/Respondents to maintain and/or repair the buildings of their own, as they have not done till this date, is just not possible for them to do repairing and it is also not possible to permit them to do repair on their portion of the premises. When the whole building itself is in dilapidated condition, one unit or two, just cannot be retained there by repairing, even if any, as it could not support the case of the tenants/occupants on any foundation to retain the buildings and/or not to demolish the buildings.

13. Therefore, all the contentions based upon the pendency of the Suits as well as by referring to the other provisions of law, in our view, is of no assistance to the Petitioner/landlord to halt the project and/or allow the buildings to have its natural death, which would result into untoward incident apart from the death and accident of many passers-by including the occupants.

14. We are dealing with writ jurisdiction. There is substance in the contention so raised by the learned counsel appearing for the occupants/tenants that question of facts cannot be gone into the writ jurisdiction and their suits are pending which will take care of various aspects of legality and/or illegality of the notices and/or related action. The undisputed position on record including the conduct of all these occupants, who otherwise have never objected to develop the property and on the contrary exchanged even the draft of settlement, but for want of certain terms and conditions, as per the occupants, could not be settled. They persisted with such litigations in spite of adjournments they sought for

settlement of the matter. Their conduct and their own case itself, in our view, destroy their submissions revolving around the above facts and the provisions of law, basically when, plain reading of section 354 of MMC Act itself provides and empowers and mandate the Commissioner/Respondent to take action once they satisfy with material with them that the building is in "dilapidated and/or inhabitable" in "dangerous conditions". The entitlement and/or dispute even if any of the occupants with the landlord and/or pendency of any litigation, in no way can be hurdled and/or prevent the Corporation as well as the landlord/owner from demolishing and/or taking effective steps to remove the occupants from such dangerous building and develop the property in accordance with law.

15. The learned counsel appearing for the occupants/tenants read and referred in support of his contention various judgments i.e. Lalbhai Tricamlal Vs. The Municipal Commissioner for the City of Bombay, , Shri Mihir Yadunath Thatte Vs. State of Maharashtra and Others, , Abdul Razzaq Sunesra v. Municipal Corporation of Greater 2013 All M R (6) 297, Mrs. Shameem Shah through her constituted attorney Mr. Abdul Rehman Khan Vs. Brihanmumbai Mahanagarpalika, and S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, .

16. The plain reading of these judgments, in our view, in no way support the Petitioners in view of above undisputed position on record. There cannot be any issue with regard to the law so laid down, but at the same stroke, we just cannot overlook the facts and circumstances of the present case and so also the conduct of the Petitioners. We have to consider the principles of the balance of convenience, equity and irreparable loss, not only for the Petitioner/owner, but for the people at large also.

17. At this stage, we are inclined to observe that the pendency of the Petitioners/tenants' Suit, and the reliefs so sought are revolved around the same notices u/s 354 of MMC Act. They have also filed one Suit bearing No. 265 of 2013 pending these Petitions. In spite of above, they have filed the present Writ Petition and made similar averments revolving around the said notices u/s 354 of MMC Act. We are inclined, therefore, to dismiss their Petitions also on this ground apart from the reasons so recorded above. We are not here to decide the Suits and the prayers so made therein. But in view of above admitted position on record and in view of the prayers so made by the landlord/Petitioner apart from notices so issued by the Respondent-Corporation u/s 354 of MMC Act and as the submission is made in the interest of people at large that such building cannot be permitted to stand as it is and is required to be demolished as early as possible being in dilapidated condition. Therefore, there is no option but to permit the Corporation as well as the landlord-owner to take steps in accordance with law by following the judgments of this Court.

18. Mr. Ravi Kadam, learned senior counsel appearing for the Petitioner in W.P. No. 794/2014 has read and referred following judgments:

- (i) M/s. Whiz Enterprise Private Ltd. v. State of Maharashtra and ors.1.
- (ii) The Tadeshwar Wadi Co-operative Housing Society Ltd. Vs. The State of Maharashtra Mantralaya and Others,
- (iii) Smt. Esther Manickam Vs. Municipal Corporation of Greater Bombay and M/s. Blue Estate Private Ltd.,
- (iv) M/s. Mehul Realtors Private Ltd. vs. Mumbai Municipal Corporation of Gr. Mumbai & ors.,²
- (v) Cosmos Homes India Pvt Ltd. and anr. vs. The Municipal Corporation of Greater Mumbai and ³

19. The subject to satisfaction recorded by the Officials about the dangerous conditions of the building in question cannot be reexamined again and again at the instance of the occupants in the present facts and circumstances of the case. The Commissioner is under mandate to make the provisions workable and required to take immediate steps.

20. However, it is made clear that so far as the landlord's legal obligation to provide other occupants/shed owners the alternate accommodation and permanent structures is in no way restricted. On the contrary, the offers so made and recorded in the order dated 2.4.2014 need to be complied with by the landlord/owner.

21. The another angle in the present matter is landlord and tenant relationship and the respective rights/obligations of the parties. The private building and the Corporation buildings are two distinct nature of building. The Petitioner is owner/builder of the private premises/property. The contested Respondents are the occupants/tenants of the respective premises. The change in Mumbai life with the developing infrastructure, real estate residential as well as commercial property hard to ignore. The landlord/owner's right to develop his/her/its property cannot be denied, but it is subject to control of rules, regulation and the policy. The rights and the entitlement of the tenant/occupants are equally relevant, but again governed by the Tenancy Act/policy. The landlord and tenant relationship are governed by the different statute. The allegation of fraud and misrepresentation cannot be decided in the present facts of the case, when except these occupants all majority have been supporting the case of the Petitioner/Corporation. The tenants, therefore, are entitled for reoccupation right of equal area premises/flats/unit after development of the property, if any. There landlord's relationship continues so also their respective rights and obligations, unless evicted by following due procedure of law. The tenants cannot entitle or claim ownership right for the units/premises which the owner/developer offered to provide unless agreed or settled otherwise. The minority occupants/tenants cannot oppose redevelopment which is in the interest of all other tenants/occupants, who have already left the premises.

22. The offer of the landlord/owner to provide them ownership flat unit of equal

area with amenities and alternate accommodation or rent/compensation till the reconstruction is over of the new premises, is nowhere contemplated under the rent/State Act. The future development in view of Section 354 notices situation, needs to read cumulatively by all the concerned. The minority occupants/tenants can not be isolated or permitted to halt/stop the redevelopment of the property by the landlord/owner/builder. In the situation like this in view above property situation, and taking overall view of the matter, we are inclined to observe in the interest of development rather than halting at the instance of occupants/tenants, who are also not denying the development of property and acceptance of the ownership of the premises.

23. It is made clear that so far as shed-owners are concerned, the learned senior advocate appearing for the Respondent-Corporation made statement that notices are only for the tenements/structures. We are dealing with said notices only. However, this is in no way prevent the shed owners/occupants to settle the matter alongwith the other occupants. It is also made clear that considering the totality of the matter that cannot be even the reason not to permit the Respondent-Corporation and the Petitioner/landlord-owner to proceed with the actions so contemplated u/s 354 of MMC Act and/or to develop the property in accordance with law.

24. Considering the fact that the occupants are occupying the premises since so many years and still they are in occupation, we are inclined to grant them four weeks time to vacate the premises, failing which the Petitioner/landlord as well as the Respondent-Corporation are free to take action in accordance with law as referred above.

25. The learned senior advocate appearing for the Respondent-Corporation also submitted that there is no reason now to postpone the demolition action because of ensuing monsoon apart from the fact that the building is in dilapidated condition and only these Respondents are residing and/or not vacating the premises when all others have already vacated.

26. The occupants/tenants if failed to vacate or settle the matter, in view of above the Petitioner/landlord and the Respondent-Corporation are at liberty to take appropriate steps including the police assistance for the same as recorded in Smt. Esther Manickam vs. MCGM & anr. (supra), Mehul Realtors Pvt. Ltd. (supra) and Cosmos Homes India Pvt. Ltd. (supra).

27. Learned counsel appearing for the Petitioners in Writ Petition (L) No. 707 of 2014 prayed for a certificate u/s 134A of Constitution of India, which in view of above facts and reasons and as we are deciding the matter on above undisputed facts, no case of "substantial question of law" is made out. This prayer is also rejected. The submissions is also made by the learned counsel appearing for the Respondents in Writ Petition No. 794 of 2014 and the Petitioners in Writ Petition (L) No. 707 of 2014 to stay and effect the operation of this order. For the reasons so recorded above and as we have already granted four weeks" time to vacate

the premises, we are not inclined to grant stay of the order as prayed. The prayer is accordingly, rejected.

28. Pursuance to the order passed by this Court on 2.4.2014, the statement is made by the learned senior advocate appearing for the Respondent-Corporation that they have reconnected water supply and also addressed a letter to the Reliance Energy, who also connected the electricity. This arrangement should continue till the occupants/tenants vacate their respective premises/tenement, or till the implementation of the removal/demolition of the structures. [Appeal from Order No. 1377/2013 - Manjul Darshan Building Tenants Welfare Association vs. Municipal Corporation of Gr. Mumbai decided on 21 December 2013 (AS)]. For the above reason, the following order:

ORDER

(i) In Writ Petition No. 794 of 2014, the Respondent/Corporation as well as landlord/owner is directed to take steps in accordance with law in pursuance to the notices and if the Respondents/tenants/occupants fail to vacate and/or resist the action of evacuation/demolition, the Corporation may take police aid for giving effect to the notices. Writ Petition is accordingly allowed partly.

(ii) Writ Petition (Lodging) No. 707 of 2014 is dismissed.

(iii) Notice of Motion No. 239 of 2014 is also dismissed.

(iv) There shall be no order as to costs.

(v) Parties to act on the basis of an authenticated copy of this order.

1Original Side Writ Petition (L) No. 28/2009 decided on 30-07-2009 (Bombay High Court)

2Original Side Writ Petition No. 1522/2013 decided on 17.02.2014

3Original Side Writ Petition No. 2874 of 2012 decided on 9.12.2013