
(2023) 04 BOM CK 0046

In the Bombay High Court

Case No : Appeal From Order No.780, 781 Of 2022, Interim Application
No.17005, 17007 Of 2022

Mansukhlal Narottamdas Kothari And Ors

APPELLANT

Vs

Commissioner, MCGM And Ors

RESPONDENT

Date of Decision : 25-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Mumbai Municipal Corporation Act, 1888 — Section 354B, 354, 354(5)
Maharashtra Rent Control Act, 1999 — Section 7(15)

Citation : (2023) 04 BOM CK 0046

Hon'ble Judges : N. J. Jamadar, J

Bench : Single Bench

Advocate : J.S.Kini, Aum Kini, Sapna Krishnappa, Smita Tondwalkar, Girish Godbole, Arun Mehta, Sonika Mehta, Aniket Srivastav, Akshar Laws, Rahul N. Kamble

Final Decision : Dismissed

Judgement

N.J.Jamadar, J

1. These Appeals are directed against an order dated 16 April 2022 passed by the learned Judge, City Civil Court, Greater Mumbai in Notice of Motion No.930 of 2019 in L.C.Suit No.938 of 2019, whereby the Notice of Motion taken out by the Appellants-Plaintiffs to restrain the Municipal Corporation, Greater Mumbai – Respondent No.1-Defendant No.1 from taking action in pursuance of the Notice dated 8 February 2019 issued under Section 354 of the Mumbai Municipal Corporation Act, 1888 ('the Act, 1888') and demolishing the building known as 'Amrut Kunj' consisting of ground plus four floors, comprising 27 tenements ('the suit building') came to be dismissed.

2. For the sake of convenience and clarity, the parties are hereinafter referred to in the capacity in which they are arrayed before the trial court.

3. The background facts can be stated in brief as under :

3.1 The Plaintiffs are in the occupation of the tenements in the suit building as tenants thereof. Defendant Nos.3 and 4 are the owners of the suit building. The Plaintiffs assert, the Designated Officer of the Municipal Corporation – Defendant No.2, issued notice under Section 354 of the Act, 1888 to the owners/occupants of the suit building without application of mind. Pre-requisites for issue of notice under Section 354 of the Act, 1888 have not been satisfied. Notices were issued to 10 persons who are dead. Before issuing notices, Defendant Nos.1 and 2 have not adhered to the fundamental principles of natural justice. In substance, at the instance of the owners of the suit building, Defendant Nos.1 and 2 have initiated action against the suit building.

3.2 The Plaintiffs aver that the structural audit report submitted by the Defendant Nos.3 and 4 is a paper report. The said report is prepared sans proper inspection. It adverts to the parts of the building and/or facilities which do not exist in the suit building. In contrast, according to the Plaintiffs, the structural auditor appointed by the Plaintiffs has given a comprehensive and well-reasoned report. The report classifies the suit building as C-2A.

3.3 In the face of these reports, the reports of the Technical Advisory Committee (TAC) dated 29 January 2019 and 10 June 2020 do not command any value as the TAC has classified the suit building as C1, requiring immediate evacuation and demolition in a perfunctory manner. The notices issued under Section 354 of the Act, 1888 based on such TAC reports, are illegal and invalid and deserve to be quashed. The Plaintiffs, thus, prayed for quashing and setting aside the notice dated 8 February 2019 issued by Defendant No.2 under Section 354 of the Act, 1888 and to restrain Defendant Nos.1 and 2 from acting upon the said notice dated 8 February 2019 and from demolishing the suit building.

3.4 In the said suit, the Plaintiffs took out a Notice of Motion seeking interim reliefs. The Notice of Motion was resisted by Defendant Nos.1 and 2 as well as Defendant Nos.3 and 4.

3.5 By the impugned order, the learned Judge, City Civil Court, was persuaded to dismiss the Notice of Motion, holding that the TAC reports cannot be questioned on the ground that the structural audit report submitted by the Plaintiffs has not been accepted. TAC has given adequate reasons to categorize the suit building in C1 category and there was no reason to discard the conclusion of the TAC.

3.6 Being aggrieved, the Plaintiffs are in Appeals.

4. I have heard Mr. Kini, learned Counsel for the Appellants, Mrs. Tondwalkar, learned Counsel for the Municipal Corporation and Mr. Girish Godbole, learned Senior Advocate, for Respondent Nos.3 and 4, at some length. With the assistance of the learned Counsel for the parties, I have perused the material on record including the reports of the structural auditors and TAC reports.

5. The learned Counsel for the Appellants mounted a multi-fold challenge to the categorization of the suit building in C1 category. Firstly, the report of the

structural stability submitted by Dr. K.M.Bajoria, IIT Mumbai, according to Mr. Kini, is based on factually incorrect foundation. Inviting the attention of the Court to the information furnished in the proforma B annexed to the report, especially the observations as regards the 'lift walls' and 'under ground tank' [10 (i) and (j)], Mr. Kini would urge that the structural auditor has classified those facilities as poor though those facilities are not at all available at the suit building. Mr. Kini urged with a degree of vehemence that the aforesaid observations in the report are a pointer to the fact that the report has not been prepared after requisite and diligent verification of the structure.

6. Mr. Kini would urge, it defies comprehension that the structure which abuts the suit building and forms part of one and the same building is classified as C3. Mr. Kini would submit that the confusion is further confounded by the fact that a residential chawl having ground floor structure only, is classified as C1. It was urged that a single storied structure can never be classified as a dilapidated structure warranting immediate demolition. At the same breath, according to Mr. Kini, another commercial structure at the front, where the nursing home is situated, is classified as C3. It was submitted that the suit building has been singled out for classification as C1 with an ulterior motive.

7. Mrs. Tondwalkar, learned Counsel for Defendant Nos.1 and 2 countered the submissions of Mr. Kini. It was urged that there are two TAC Reports. Even the second Structural Auditor who carried out the audit at the instance of the tenants, adverts to the dilapidated nature of the suit building. TAC has applied scientific and standard parameters to arrive at a conclusion that the suit building falls in C1 category. According to Mrs. Tondwalkar, the report of TAC is not susceptible to challenge on the merits of the technical opinion.

8. Mr. Girish Godbole, learned Senior Advocate for the Defendant Nos.3 and 4 – Landlords, strenuously submitted that the impugned order does not warrant any interference by this Court. Laying emphasis on the nature of the inquiry which the Court can embark upon, when confronted with the report of TAC, a body of experts, Mr. Godbole would urge that what is open for appraisal is the decision making process and not the decision. In the case at hand, according to Mr. Godbole, a fair opportunity of hearing was provided to the tenants, not once but twice. TAC has, after advertent to the reports of the structural auditors, including two reports of the auditors appointed at the instance of the tenants, recorded a finding that the suit building falls in category C1. In the absence of any ground to assail the decision making process, this Court would not be justified in sitting in appeal over the decision of TAC, submitted Mr. Godbole. It was further urged that even the reports of analysis, annexed to the structural audit report of Ree Structure, appointed at the instance of the tenants, lend support to the conclusion of the TAC that the suit building is dangerous and dilapidated, posing serious risk to the life and property.

9. Mr. Godbole would further urge that the landlords in the instant case, are not averse to the tenants reconstructing the suit building at their own costs. The

landlords have not instituted any suit to evict the tenants. The allegations of malafide, thus, cannot be attributed to the landlords. The rights of the tenants are statutorily protected, and, thus, the resistance to demolition and eviction cannot be countenanced. At any rate, the landlords cannot be compelled to redevelop the suit building to protect the rights of the tenants which the Appellants-tenants in this case essentially desire, urged Mr. Godbole.

10. I have given anxious consideration to the rival submissions canvassed across the bar. In a metropolis like Mumbai, where the land and residential space command a premium, a notice to demolish the building, in which there are a number of tenements, invariably leads to proceedings before the court. At one end of the spectrum, there is a concern of the Municipal authorities to prevent the likely mishap on account of impending collapse of a dilapidated and dangerous building. At the other end of the spectrum, is the hardship which the occupants of the building face in the event of forced eviction.

11. Under Section 354 of the Act, 1888, the Commissioner, if satisfied that the building or structure is in ruinous condition, or likely to fall, or in any way dangerous to any person occupying, resorting to or passing by such structure or any other structure or place in the neighbourhood thereof, may, by written notice, require the owner or occupier of such structure to pull it down. Sub-section (5) of Section 354 provides that the action taken under Section 354 shall not affect inter se rights of the owners or tenants or occupiers, including right of re-occupation in any manner. Explanation to sub-section (5) clarifies that the term 'the tenants' shall have the same meaning as assigned to it in clause (15) of Section 7 of the Maharashtra Rent Control Act, 1999.

12. To rationalise the process and arrest possible abuse of the aforesaid provisions at the instance of unscrupulous landlords to get the tenants and occupants evicted of the premises by getting the notices issued under Section 354 of the Act, 1888, this Court gave directions in the case of Municipal Corporation of Greater Mumbai V/s. The State of Maharashtra and Ors. WP No.1080 of 2015 which resulted in institution of a mechanism of TAC to regulate the matter of categorizing private and municipal corporation buildings. Policy framed pursuant thereto envisages evaluation of the buildings and classification thereof in C1, C2A, C2B and C3 category by the TAC.

13. In the case at hand, there is a report of structural stability by Dr. K.M.Bajoria, IIT Mumbai at the instance of the landlords. As regards the state of the suit building, the structural auditor has made the following observations :

“(a) Residential Building (G+4) : It was found that the quality of original construction is poor to very poor. Honeycombing is observed in slabs, beams and columns at several places. Steel reinforcement has undergone moderate to severe corrosion in many locations. This has resulted in spalling of concrete cover. Bulging of columns is also observed at some locations. Portions of slab bottom covers have become loose at several places, and have fallen off at some

places. The exposed steel is seen to have rested very badly. Originally the building had common toilet blocks on each floor. Toilet blocks inside the flats are not part of original construction. The chajjas over windows have deflected due to corrosion of steel reinforcement. The balcony portions were originally open, but subsequently have been covered and taken inside for use as was area/kitchen/room. There is vegetation growth along the external walls due to soil deposit in the cracks of walls. Air conditioners and external grills are seen to have been installed on windows resulting in increased loading and water ingress. RCC water tank on the terrace is also found to be in dilapidated condition. This building has been found to be in extremely dangerous conditions and can be classified as category C1. This buildings need to be vacated and demolished.”

14. The Report of the Ree Structure classified the suit building as C2A. Another report submitted by CSR Consultant and Associates classified the suit building in C2A category, to be evacuated partially and partial demolition of RCC chajjas at the time of repairing work and, requiring major structural repairs and work specified in the report. It further clarifies that if the repairs are not carried out within a time period of three months from the date of MCGM notice under Section 353B, the said report would not be valid beyond the said period.

15. The first TAC report considered the structural audit report of IIT Mumbai and M/s. Ree Structure. After inspection of the suit building by the members of the TAC on 26 December 2018 and hearing held on 3 January 2019 in which the structural engineers of IIT, Mumbai and M/s. Ree Structure participated and their reports considered, the TAC classified the suit building as C1. The second TAC report took into account the report of M/s. CSR Consultant and Associates, another structural auditor, who carried out the structural audit at the instance of the tenants, in addition to the report of IIT Mumbai and M/s. Ree Structure. The TAC again opined that the suit building deserves to be categorized as C1.

16. In the backdrop of the aforesaid technical reports, the nature of the inquiry which the Court can embark upon assumes significance. Certainly the Court is not equipped to delve into the merits of the decision arrived at by a body of experts. What properly falls within the realm of adjudication is the decision making process. Whether the authority has arrived at a decision after consideration of the material which bears upon the decision ? Has the authority unjustifiably excluded the material which would influence the decision ? Is the decision arrived at by the authority so unreasonable that no prudent person could arrive at such a decision ? Has the authority provided a reasonable opportunity of hearing to the affected party before taking the decision ?

17. These and the like are the questions which crop up for consideration when the decision making process is to be tested. The extent to which the Court can delve into the validity and correctness of TAC has been considered by this Court in a number of decisions. A profitable reference, in this context, can be made to a Division Bench judgment in the case of Khalil Ahmed Mohd. Ali Hamdulay and Ors. V/s. Municipal Corporation of Greater Mumbai WP(L) 2417 of 2019 dated 22

August 2019 wherein after advertng to the previous precedents, the Division Bench, inter alia, culled out the following propositions :

"(a) It is never for a Court in exercise of its limited writ jurisdiction under Article 226 of the Constitution of India to decide whether a particular structure is or is not actually in a ruinous or dilapidated condition : see : Diwanchand Gupta V NM Shah & Ors. AIR 1972 Bom 316; Nathubhai Dhulaji V Municipal Corporation AIR 1959 Bom 332,

(b)The rights of tenants/occupants are not harmed by demolition ordered and carried out. These rights are adequately safeguarded by Section 354(5) of the MMC Act and by the provisions of the governing Maharashtra Rent Control Act 1999 which fully occupies the field regarding tenancies of built premises in Maharashtra. The Supreme Court in Shaha Ratansi Khimji & Ors. V Kumbhar Sons Hotel Pvt. Ltd. & Ors. (2014) 14 SCC 1 now makes it clear that the rights of tenants and occupants are unaffected by the required demolition.

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(f) In order to succeed a Petitioner before the Court must be able to show that the impugned action suffers from Wednesbury unreasonableness, Associated Provincial Picture Houses Ltd. V Wednesbury Corporation, (1948) 1 KB 223 : 1947 (2) ALL ER 680 i.e. it is so unreasonable that no rational person could, having regard to the fact of the case, ever have reached it. There is no scope in such cases for any larger judicial review or invoking the doctrine of proportionality. State of Madhya Pradesh & Ors. V Hazarilal, (2008 3 SCC 273; Coimbatore District Central Cooperative Bank V Coimbatore District Cooperative Bank Employees Association & Anr., (2007) 4 SCC 669. In other words the decision must be shown to be utterly perverse, or in excess of authority or manifestly illegal.

(g)It is never sufficient merely to allege mala fides without particulars. While direct evidence may not always be available as proof of mala fides, they must nonetheless be established. In the words of the Supreme Court, allegations of mala fides are more easily made than proved, and the very seriousness of such allegations demands proof of high order of credibility."

18. In the case of Mahendra Bhalchandra Shah and Ors. V/s. Municipal Corporation of Greater Mumbai and Ors. WPL 1755 of 2019 dt. 24 June 2019 the Division Bench reiterated that the Court is not permitted or even capable of questioning as to whether the building is dangerous as to warrant immediate demolition, as follows :

"33. It is now clear that a Court is not permitted or even capable of determining whether a building is truly so ruinous as to warrant its demolition. We do not assess the structural condition of the building (and the chawl in question is very much a 'building'), or its structural vulnerability. We only assess the vulnerability in law of demolition notices or the TAC recommendation or order. In other words,

we address ourselves not to the decision itself, but to the process by which it was reached.”

19. A learned Single Judge of this Court in the case of Pravinchandra Meghji Nisar & Ors. V/s. Municipal Corporation of Greater Mumbai and Ors. Appeal from Order (ST) No.23630 of 2018 had an occasion to consider the challenge to the TAC Report in an Appeal from Order.

The observations in paragraph 10 are material and, hence, extracted below :

“10. Moreover, the TAC is an independent ‘Expert Committee’, which is appointed as per the directions given by this Court in Civil Writ Petition No.1135 of 2014, which is supposed to take independent decision in all these matters, wherein there are conflicting reports submitted by the occupants-tenants and the landlord. Therefore, being totally an impartial and independent ‘Authority’ and especially when the ‘Technical Advisory Committee’ is consisting of the ‘experts’, neither this Court, nor the Trial Court is expected to sit over the said TAC’s report and take any different view of the matter.”

20. The legal position which, thus, emerges is that the Court is neither supposed nor equipped to sit in appeal over the decision of the TAC. If the decision making process cannot be faulted at, the Court would be slow in delving into correctness of the decision of TAC. The Court cannot lose sight of the fact that in a controversy of this nature, often there are conflicting reports. Often the Municipal Corporation and the landlords rely on reports which indicate that the building needs to be immediately demolished. In contrast, the report filed on behalf of the occupants/tenants invariably suggests that the building is worthy of repairs. Herein comes the *Raison d’être*, and the role of TAC as an independent and expert body. TAC is expected not only to analyze the reports of the structural auditors but also physically inspect the building and arrive at an independent decision. Once the TAC is shown to have followed a reasonable process to arrive at the decision after considering entire material, the decision may not be amenable to judicial review, unless it suffers from aforesaid infirmities.

21. Reverting to the facts of the case at hand, the decision making process adopted by TAC could not be faulted at. It is not the case that either an effective opportunity of hearing was not given to the occupants/tenants or the reports submitted by the structural auditors at the instance of the tenants were not considered. In both the reports, the TAC has indicated reasons which impelled it to categorize the suit building as C1. I do not find any justifiable reason to take a different view of the matter.

22. The submission of Mr. Kini that abutting structures have been classified in C3 category and the suit building has been singled out, may appear attractive at the first blush. However, the report of Dr. Bajoria, IIT Mumbai, is required to be read as a whole. These buildings which are classified as C3 are stated to have been well maintained. It is not necessary that a part of the same structure should suffer the same level of deterioration and damage as the one which is not well

maintained and repaired periodically. Likewise, Mr. Kini's submission that the report of IIT Mumbai referred to two items which do not exist at the suit building, on a whole, does not detract materially from the TAC Reports. It is imperative to note that even the Non-Destructive Concrete Test Report (USPV) carried out by M/s. Ree Structure, indicated that the velocity by Cross Probing of most of the units of the building was below 3000, rendering the concrete quality rating 'doubtful'.

23. In the circumstances, it cannot be said that the learned Judge, City Civil Court committed any error in declining to exercise the discretion in favour of the Plaintiffs.

24. Before parting, it is necessary to note that Mr. Godbole, on instructions of Defendant Nos.3 and 4 – Landlords, submitted that the tenancy/occupancy rights of the respective tenants/occupants under the provisions of the Maharashtra Rent Control Act, 1999 shall be duly protected and the landlords do not have any objection if the tenants of the building form an association and construct a new building sufficient to reaccommodate the existing tenants/occupants entirely at their costs, as the tenants/occupants having equivalent area subject to determination of their rent in accordance with the Maharashtra Rent Control Act, 1999.

25. Accepting the aforesaid statements, the Appeals deserve to be dismissed with the following directions.

26. Hence, the following order :

ORDER

(i) The Appeals stand dismissed.

(ii) The statements made by Mr. Godbole, on the instructions of the Respondent Nos.3 and 4 – Landlords, that the tenancy/occupancy rights of the respective tenants/occupants under the Maharashtra Rent Control Act, 1999 are duly protected and the landlords will not have any objection if the tenants of the building form an association and construct a new building sufficient to reaccommodate the existing tenants/occupants, entirely at their costs as the tenants/occupants having equivalent area subject to determination of their rent in accordance with the Maharashtra Rent Control Act, 1999, are accepted.

(iii) To facilitate the determination of the rights of the tenants/occupants and work out the equities, as and when warranted, the Municipal Corporation of Greater Mumbai – Respondent No.1 is directed to carry out a physical measurements of all the tenements within a period of 10 days from the date of this order in the presence of landlords and the respective tenants/occupants.

(iv) Ad-interim protection granted by this Court shall stand vacated after 10 days.

(v) In view of the dismissal of the Appeals, the Interim Applications do not survive and the same stand dismissed.

(vi) No order as to costs.