

A RATILAL S. PUJARA (SINCE DECEASED) THR. HIS LRS.

v.

MUNICIPAL COMMISSIONER, MUNICIPAL CORPORATION
OF GREATER MUMBAI & ORS.

B (Civil Appeal No. 5825 of 2022)

AUGUST 25, 2022

**[N. V. RAMANA, CJI, KRISHNA MURARI AND
HIMA KOHLI, JJ.]**

- C *Mumbai Municipal Corporation Act, 1888 – ss.353B and 354 – Demolition of building – Notice issued to Respondent No. 4-housing society u/s.354 of MMC Act in respect of whole building which was identified as dilapidated and dangerous – The said notice was issued after satisfaction of the Municipal Commissioner in accordance with the provision of s.354 of MMC Act – An eviction notice was also issued to the appellants for eviction from flat occupied by them – There was an earlier dispute between appellant and society relating to some unauthorised changes in the structure of disputed flat occupied by the appellant – Civil suit filed by the appellant in this regard was dismissed and High Court in appeal directed the parties to maintain status quo – Appellant challenged the two notices issued by the Municipal Corporation – High Court refused to set aside the two notices on the ground that the building was ruinous, dilapidated and dangerous and unfit for human dwelling – On appeal, held: Appellant did not set out anything specific to demonstrate any perversity or manifest illegality in the satisfaction recorded by the Municipal Commissioner – Merely because the Municipal Corporation was made party to proceedings initiated by the appellants against society regarding alterations made in their occupied flat (earlier dispute) would not mean that Municipal Corporation cannot carry out an audit of the structure as a whole, as mandated by law – The satisfaction recorded by the Municipal Commissioner was in accordance with the due procedure prescribed by law and it was not vitiated by any perversity or illegality, thus, there existed no ground to interfere with the impugned notices.*

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Dismissing the appeal, the Court

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HELD: 1. Building in question had been constructed in the year 1967 and is about 55 years old. It is settled law under the MMC Act that once a building completes the prescribed period of life under the statute i.e., 30 years, a structural audit is required to be carried out for certifying its stability and safety for human dwelling mandatorily under the provisions of Section 353B of the 1888 Act. The audit has to be carried out in terms of the legal provisions and within the time specified and if not, then it is the Municipal Commissioner who can ensure that such an audit is carried out, or if there is no co-operation, he can come to an independent conclusion. [Para 14][205-G-H; 206-A-B]

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2. The appellants did not set out anything specific in the Writ Petition demonstrating any perversity or manifest illegality in the satisfaction recorded by the Municipal Commissioner to invoke the powers of the High Court to interfere with the same. The dispute in the First Appeal and the Writ Petition are completely different having different dimensions and no inter se connection. Merely because the Municipal Corporation is a party to the proceedings initiated by the appellants with regard to alterations made in the flat existing in the dilapidated building will not mean that the Municipal Corporation cannot carry out an audit of the structure as a whole, as mandated by law, to judge the stability and safety. [Para 17][209-D-F]

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3. The building in question is in a ruinous condition and needs to be repaired at the earliest for the simple reason that it is unsafe for human habitation. Once the satisfaction recorded by the Municipal Commissioner is in accordance with the due procedure prescribed by law and is not vitiated by any perversity or any illegality, there exists no ground to interfere with the impugned notices. [Paras 21 and 22][210-E-G]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5825 of 2022.

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From the Judgment and Order dated 16.10.2019 of the High Court of Judicature at Bombay in Writ Petition No.2190 of 2015.

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A Petitioner-in-person

Prashant Bhushan, Ms. Alice Raj, Rahul Gupta, Garvesh Kabra, Ms. Pooja Kabra, Kamini Jaiswal, Ms. Rani Mishra, Advs. for the Respondents.

B The Judgment of the Court was delivered by

KRISHNA MURARI, J.

Leave granted.

2. The instant appeal has been filed assailing the judgment and final order dated 16.10.2019, passed by the High Court of Judicature at

C Bombay (hereinafter referred to as "**High Court**") in Writ Petition No. 2190/2015, whereby the High Court dismissed the writ petition filed by the Appellants challenging the Demolition Notice dated 19.01.2015 issued under Section 354 of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as "**MMC Act**") and eviction notice dated

D 21.02.2015.

3. Brief facts necessary for the disposal of this appeal are as under:

3.1 The dispute is in respect of Flat No. 9 situated in a Co-operative

Housing Society, namely, Vasudha Co-operative Housing Society Limited

E Plot No. D-2/403 Diamond Garden, 7th Cross Road, Chembur, Mumbai.

3.2 Late Shri Ratilal S. Pujara, husband of the appellant no. 1 and father of the appellants no. 2 and 3 was the owner member of said flat.

He executed a will in favour of three appellants on the basis of which they were declared as legal heirs by virtue of letter of administration

F dated 30.04.2014, issued by High Court of Bombay. Admittedly, the building was constructed in 1967 and is about 55 years old.

3.3 As per the provisions of Section 353(B) of the MMC Act, it is obligatory on the part of the owner and occupier of the building which is in existence and is in use for more than 30 years, to have it inspected

G through the registered structural engineer with Municipal Corporation of Greater Mumbai. Since the Building in question had completed 55 years of its existence, a structural audit was conducted on 22.07.2014 by a registered structural engineer. The same was submitted to the Respondent No. 2. The Building in question had been categorised as C-1 i.e., the most dangerous, in the structural audit report dated 29.07.2014. Further,

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the building in question was again inspected on 06.12.2014 by the Respondents and it was observed that the structure was in a dangerous and dilapidated condition. The inspection report and the structural audit report were put up by Respondent No. 2 requesting Respondent No. 3 to opine regarding the structure category. Vide opinion dated 15.12.2014, Respondent No. 3 declared that the building in question is of C-1 category and required to be pulled down after being vacated by the occupants.

3.4 In view of the aforesaid factual position with respect to the condition of the building, Respondent No. 4 society entered into a Re-development agreement dated 19.12.2014 with the Respondent No. 5, Harita Developers. A draft copy of the said agreement was circulated among the members of the society and at a special general body meeting on 10.11.2014, the Re-development agreement was approved and subsequently, the same was duly registered on 22.12.2014. Thereafter, all the occupants of the flats in the building were put to notice for demolition of the existing building and to vacate the flats in their occupation.

3.5 Similar notice dated 19.01.2015 under Section 354 of 1988 Act was also issued to the Respondent No. 4 for demolishing the existing building. An eviction notice dated 21.02.2015 was also issued to the appellants for eviction from Flat No. 9, occupied by them.

3.6 Being aggrieved, the appellants filed **Writ Petition No. 2190/2015** before the High Court challenging the two notices issued by the Municipal Corporation of Greater Mumbai. Vide judgment and order dated 16.10.2019, the High Court upon detail consideration of the facts and evidence on record came to conclusion that the building in which the disputed flat exists is ruinous, dilapidated and dangerous and unfit for human dwelling and also dangerous for the passersby. The High Court accordingly refused to set aside the two notices dated 19.01.2015 and 21.02.2015 issued by the Respondent No. 1 and dismissed the writ petition.

4. Challenging the judgment of the High Court, the appellants are before this court by way of the present appeal. Vide order dated 22.10.2019, this Court issued notice and granted stay by directing that no demolition order will be passed or acted upon in the meanwhile. The Builder/Developer (Respondent No. 5) was added as Party Respondent in the proceedings vide order dated 10.12.2019.

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- A 5. The genesis of the present dispute emanates out of an earlier dispute between the appellants, on one hand, and the society on the other hand relating to some unauthorized changes in the structure of disputed Flat No. 9. The appellants have not clearly pleaded in detail the facts about the said dispute but what can be culled out from the pleadings is that there was a dispute regarding the regularization of the terrace of Flat No. 9 owned by the appellants in the building in question. Subsequently, Respondent society got Flat No. 9 approved as an unauthorized flat in two plans dated 07.07.2005 and 03.05.2006 and the regularization of the terrace adjoining Flat No. 9 was kept in abeyance by the Respondent No. 3. It further appears that a civil suit was filed by the appellants in this regard which was dismissed. Thereafter, First Appeal No. 813/2012 was filed before the High Court wherein, vide order dated 19.12.2013, the parties were directed to maintain status quo.
- B 6. We have heard the Appellant-in-person and Mrs. Garvesh Kabra, learned Counsel appearing for the Respondent Nos. 1, 2 and 3 and Mr. Prashant Bhushan, Learned Counsel appearing for the Respondent No. 4. We have also gone through the pleadings of the parties, and the written arguments filed by the appellants.

CONTENTIONS ON BEHALF OF THE APPELLANTS

- E 7. It was submitted that the appellants filed First Appeal No. 813/2012 before the High Court which is pending wherein an order passed directing the parties to maintain status quo pending appeal is operative and the impugned notices being in the teeth of the said order, was not sustainable. It was further submitted that as the appellants' flat no. 9 was wrongly shown as unauthorized in the approved plans of 07.07.2005 and 03.05.2006 by the Respondent No. 3 and the Respondent No. 4, and in case the building is demolished, all evidences and proofs of injustice that has been caused by the wrongly approved plans of 07.07.2005 and 03.05.2006, would be destroyed, causing serious and irreparable loss to the appellants.
- F 8. It was further submitted that the act of the Respondent No. 2 issuing the impugned notices amounts to willful disobedience and non-compliance of the stay orders dated 19.12.2013 and 12.02.2014 passed by the High Court in Civil Application No. 1745/2012 in FA No. 813/2012.

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CONTENTIONS ON BEHALF OF THE RESPONDENTS A

9. It was submitted that the impugned order passed by the High Court in dismissing the writ petition is neither perverse nor suffers from irregularity.

10. It was further submitted that the High Court has rightly held that after the redevelopment of the property, the appellants will have a decent, safe, and stable structure, and their rights in the building in regard to her flat, are sufficiently and fully protected. B

11. It was vehemently submitted that there is a dispute regarding regularization of the terrace of the flat owned by the appellants in the building in question. The issue of regularization of the terrace is a totally different and distinct issue and only because that issue is pending, the building which is not safe for human dwelling cannot be allowed to be inhabited by the appellants more so when all other residents of the building have vacated the building and no one except the Appellants have challenged the notice issued under Section 354 of the MMC Act. C

12. We have carefully considered the submissions made at the bar and perused the materials placed on record. D

ANALYSIS

13. Before advertig to the facts of the case, it is important to notice that the buildings in Mumbai that need repair are classified into the following categories: E

Category	Description
C-1	Unsafe/dangerous/inhabitable structures need to be vacated and demolished
C2A	Partially unsafe/dangerous/structures requiring major structural repairs by partially vacating the dangerous part of the structure
C2B	Structure requiring major structural repairs without vacating the structure
C3	Minor repairs

14. In the case at hands, the building in question had been constructed in the year 1967 and is about 55 years old. It is settled law under the MMC Act that once a building completes the prescribed period of life under the statute i.e., 30 years, a structural audit is required to be carried out for certifying its stability and safety for human dwelling F

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- A mandatorily under the provisions of Section 353B of the 1888 Act. The audit has to be carried out in terms of the legal provisions and within the time specified and if not, then it is the Municipal Commissioner who can ensure that such an audit is carried out, or if there is no co-operation, he can come to an independent conclusion. Section 353B of the MMC Act talks about Structural Stability Certificate which reads as under:
- B “*353B. (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,*
- D *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.*
- E *(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.*
- F *(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.*
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(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. A

(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. B

(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. C D

(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. E F

(8) In case the appeal is decided in favour of the appellants and the amount of expenses deposited with the Corporation is more than the amount payable by the appellants, 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 appellants, towards the property tax payable by the owner in respect of such building thereafter.” G

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A 15. In the case at hand, the structure audit report dated 29.07.2014 of the building in question has found it to be dangerous for human dwelling and also for the passers-by. Relevant concluding part of the structural audit report dated 29.07.2014 is reproduced here under:

B *"In view of the above conclusions, we feel that most of the structural elements have lost their strength and hence design load carrying as per the provisions and requirements of I.S codes. Deterioration in these structural elements are wide spread and severe at several locations. Partial collapse of the brick work has at the side of building occurred at many places and common passage has sagged at few locations and heavy cracks seen in the common rear passage slab panels at many places is imminent, which are likely to cause severe injury to occupants and maybe loss of their life. Because of partial collapse of structural audit such as walls and wooden beams (wooden as well as additional steel elements) of the building, there is possibility of loss of lateral stiffness and stability of the entire building and subsequent collapse of the entire building in case of earthquake and any natural calamities. The said structure is beyond logical repairs and also unsafe for habitation. In our opinion, the said building is in C1 category and has to be evacuated immediately to avoid the mishaps."*

C 16. A notice under Section 354 of the MMC Act was issued and it is pertinent to mention that the notice was issued in respect of the whole building which has been identified as dilapidated and dangerous. The said notice was issued only after the satisfaction of the Municipal F Commissioner in accordance with the provisions of Section 354 of the MMC Act which reads as under:-

G "354. (1) If it shall at any time appear to the Commissioner that any structure (including under this expression any building, wall or other structure and anything affixed to or projecting from any building, wall or other structure) is in a 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 neighborhood thereof, the Commissioner may, by written notice, require the owner or occupier of such structure to pull down, secure or H

repair such structure 1[subject to the provisions of section A 342], of danger therefrom.

(2) The Commissioner may also if he thinks fit, require the said owner or occupier, by the said notice, either forthwith or before proceeding to pull down, secure or repair the said structure, to set up a proper and sufficient hoard or fence for the protection of passers-by and other persons, with a convenient platform and hand-rail, if there be room enough for the same and the Commissioner shall think the same desirable, to serve as a footway for passengers outside of such hoard or fence."

17. It is not disputed that First Appeal No. 812 of 2012 filed by the appellants herein before the High Court with respect to the dispute with the society in respect of unauthorized alteration in the disputed flat is pending and orders of status quo is in operation. The appellants further filed a Writ petition challenging the notice under Section 354 of the MMC Act and the eviction notice issued by the Respondent No. 4. To the utter dismay of this court, the appellants did not set out anything specific in the Writ Petition demonstrating any perversity or manifest illegality in the satisfaction recorded by the Municipal Commissioner to invoke the powers of the High Court to interfere with the same. The entire emphasis was on the order dated 19.12.2013, passed in First Appeal No. 812 of 2012 directing the parties to maintain status quo, pending appeal. The dispute in the First Appeal and the Writ Petition are completely different having different dimensions and no inter se connection with each other. Merely because the Municipal Corporation is a party to the proceedings initiated by the appellants with regard to alterations made in the flat existing in the dilapidated building will not mean that the Municipal Corporation cannot carry out an audit of the structure as a whole, as mandated by law, to judge the stability and safety.

18. The relentless contention of the appellants is that their right in the building will not be protected and get further affected after demolition of the building but the same is not sustainable in our considered view, for the simple reason that the Re-development agreement dated 19.12.2014, contains a clause protecting the rights of the appellants in the building which is reproduced hereunder:

1. Eight new flats each measuring 740 sq. ft. carpet area for flat owners i.e., flat no. 1 to 8.

- A 2. Two new flats each measuring 1035 sq. ft. carpet area for 2 flat owners i.e. flat no. 9 and 10 (including an area to be given in lieu of an open terrace attached to their respective flats.)
- B 19. The appellants herein are the occupiers of Flat No. 9 which has a attached open terrace, therefore they have been given a larger carpet area. Further, the agreement also stated that instead of providing temporary alternative accommodation during the period of construction to the appellants and other members, Respondent No. 5 shall pay displacement compensation @ Rs. 30,000/- per month to each member. The said amount was later enhanced to Rs. 40,000/- per month to each member vide letter dated 18.12.2019. To add to this, one-month displacement compensation was to be paid as a brokerage in addition to Rs. 20,000 as shifting and transport compensation to each member.
- C 20. As a consequence, the rights of the appellants in the flat owned by them in the building in question is an independent right and the demolition of the building nowhere would affect that independent right. In addition to this, the appellants have also been provided with alternate accommodation and the rights of the appellants will not be affected by virtue of demolition or evacuation in exercise of the power under Section 354 of the MMC Act. Not only the appellants, but other residents of the building will have a decent, safe and stable structure after the reconstruction of the building in question.
- D 21. The building in question is in a ruinous condition and needs to be repaired at the earliest for the simple reason that it is unsafe for human habitation. The historic buildings in Mumbai are a reminder of the city's rich and aesthetic architectural styles. Therefore, in order to
- E F preserve the authenticity of the buildings, it is important that certain legal measures need to be taken so that the safety and stability can be certified under Section 353B of the MMC Act, 1888.
- G 22. Once we find that the satisfaction recorded by the Municipal Commissioner is in accordance with the due procedure prescribed by law and is not vitiated by any perversity or any illegality, there exists no ground to interfere with the impugned notices. Merely because the appellants are senior citizens, does not impel us to take any lenient view in the matter in larger public interest particularly when the private interests of the appellants have been amply safeguarded.
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23. Judicial notice can be taken of various media reports reporting A
collapse of many old structures in Mumbai causing serious loss of human
lives and limbs. By making interference of any sort in the matter at the
behest of the appellants, in the existing facts and circumstances, we
would not only be putting the life of the appellants and other residents of
the building in jeopardy, but also hazarding the life and limb of the general
public as well.

24. In our considered view, the High Court has rightly dismissed B
the challenge laid to the impugned notices of demolition and eviction.

25. As a result, the appeal stands dismissed. All the pending C
applications as well the contempt petition filed by the appellants also
stand disposed accordingly.

Devika Gujral
(Assisted by : Preetam Bharti, LCRA)

Appeal dismissed.