

Shubhas Jain vs Rajeshwari Shivam on 20 July, 2021

Author: Indira Banerjee

Bench: V. Ramasubramanian, Indira Banerjee

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NO

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2848 OF 2021
(Arising out of SLP (C) No.1837 of 2021)

SHUBHAS JAIN

Appel

VERSUS

RAJESHWARI SHIVAM & ORS.

Responde

JUDGMENT

INDIRA BANERJEE, J.

Leave granted.

2. This appeal is against a final judgment and order dated 24.11.2020 passed by the Bombay High Court, disposing of the writ petition WP-LD-VC- No.163/2020 filed by the Respondent No.1, a tenant of the Appellant, and giving liberty to the Respondent No.1 to remove an adjoining wall with the assistance of architects M/s. Shetgiri and Associates, without damaging the property of the Appellant.

3. The Appellant is the owner of the structure admeasuring 1069 sqm. at Vishram (Mahavir) Baug Compound, Plot bearing CTS No.792, P.L. Lokhande Marg, Chembur, Mumbai, hereinafter referred to as the “premises in question”.

4. The Appellant states that the premises in question is comprised of 3 three-storied interlinked structures, constructed by the predecessors-in-interest of the Appellant in 1930. The first structure has 6 rooms, the second structure has 10 rooms and the third structure has 9 rooms. There were about 24 tenants at the premises in question, including the Respondent No.1.

5. It is the case of the Appellant that the impugned order has been passed, overlooking the submission of the Respondent- Municipal Corporation with regard to the precarious condition of the premises in question, the report dated 15.05.2015 of the Technical Advisory Committee to whom the Respondent-Municipal Corporation had made a reference, and the Structural Audit Report prepared by M/s Manohar Ashatavadhani & Associate opining that the building is in a critical and dangerous situation in C-1 category.

6. Buildings in Mumbai in need of repair are classified into C1, C2-A, C2-B and C3 categories having regard to their condition. Category C1 buildings are those which require immediate evacuation and demolition, Category C2-A buildings are also required to be evacuated. Category C-2A buildings require major structural repairs and/or partial demolition. C-2B buildings are repairable without eviction, but need structural repairs. C-3 buildings do not require eviction. They need only minor repairs.

7. The Appellant says that the Petitioner has entered into arrangements with all the tenants except 6 including the Respondent No.1/writ petitioner who have not agreed to vacate the premises in question. All the other tenants have duly vacated.

8. It is alleged that the structures at the premises in question, which are in a dilapidated and dangerous condition, have been declared as of the C-1 category. One of the structures is of the C-2A category. The Appellant submits that, the structures being interlinked, structural repair of any one structure would affect the stability of the adjacent structure.

9. M/s. Manohar Ashthavadhani and Associates had prepared a Structural Audit Report dated 25.5.2014 of the premises in question, concluding:

“In view of the facts and conditions explained above, it is noticed that the structural condition of almost all buildings (particularly R.C.C. buildings) is dangerous and critical. The buildings are beyond economical repairs and repair is not financially viable. The buildings are dangerous and unsafe to stay. Hence buildings will have to be vacated urgently for safety of occupants.

It is advised to do the propping to dangerous portion of the building immediately for safety of the occupants till the buildings are vacated.

The owner occupants and the local authority has to take urgent decision on the action.”

10. On or about 19.07.2014, the Respondent-Municipal Corporation issued a notice under Section 488 of the Bombay Municipal Corporation Act, 1888 (now known as the Mumbai Municipal Corporation Act) and hereinafter referred to as the Municipal Corporation Act, for inspection of the structures at the premises in question.

11. A notice under Section 354 of the Municipal Corporation Act was issued, for demolition of the premises in question to safeguard human life, as the building had been declared as of C-1 category.
12. According to the appellant, the notice under Section 354 of the Bombay Municipal Corporation Act was challenged by the Respondent No.1 in the City Civil Court, Bombay by filing LC Suit No. 702 of 2015. However, by an order dated 13.3.2015, the City Civil Court refused to grant stay of demolition.
13. On or about 08.04.2015, the Respondent No.1 challenged the order of the City Civil Court in the High Court by filing an appeal. The appeal was rejected.
14. Thereafter, on or about 15.05.2015, the Respondent-Municipal Corporation referred the matter before the Technical Advisory Committee as there were contrary reports. The Technical Advisory Committee went through the different Structural Audit Reports and thereafter opined that the building was temporarily repairable.
15. The Respondent No.1 and other tenants thereafter gave a certificate of stability dated 13.11.2015 by M/s Crown Consultants, stating that the structure was safe for the next five years, subject to annual civil and structural maintenance work. Over five years have already elapsed since the date of issuance of the Certificate.
16. On 25.01.2019, the Respondent-Municipal Corporation issued a notice to the Appellant under Section 353(B) of the Municipal Corporation Act calling upon the Appellant to get the building examined by a Licensed Structural Engineer.
17. On 19.02.2019, M/s Manohar Ashtavadhani & Associates submitted a report stating that Structure No.1 and Structure No.2 were in critical and dangerous condition and fell under C-1 category and Structure No. 3 urgently required major repairs and was classifiable in C2-A category.
18. On 22.04.2019, the Appellant forwarded the said report to the Respondent-Municipal Corporation. On 16.10.2019, the Respondent No.1 and other tenants submitted the Structural Audit Report dated 16.10.2019 issued by M/s Crown Consultant Architect to the Respondent-Municipal Corporation. Thereafter, on 10.01.2020, the Respondent-Municipal Corporation referred the matter to the Technical Advisory Committee in view of contradictory reports.
19. The Technical Advisory Committee conducted hearing on 19.06.2020 and found the condition of the said buildings very dangerous as the same were over 90 years old. The Technical Advisory Committee found that no civil and structural maintenance had been carried out in the last four years as advised by the consultant in his Stability Certificate dated 13.11.2015. Therefore, the structures were declared as of C-1 category.
20. On 02.07.2020, the Respondent-Municipal Corporation issued a notice revoking the 50 days' time earlier granted to file objection on the decision of the Technical Advisory Committee, since the Technical Advisory Committee had declared the structure to be of C-1 category.

21. On 02.02.2020, a notice under Section 354 of the Municipal Corporation Act was issued to the Appellant and to the tenants including the Respondent No.1 directing them to vacate the buildings in question. Thereafter, on 09.07.2020, the Appellant sent letters to all the tenants including the Respondent No.1 informing them of the Technical Advisory Committee Report and requesting them to vacate the premises in question. The Respondent No.1 however filed writ petition WP-LD-VC-No.163 of 2020 challenging the notice issued by the Respondent-Municipal Corporation under Section 354 of the Municipal Corporation Act.

22. On 29.9.2020, M/s Shetgiri and Associates, Architects submitted a report to the effect that the life of the structure could be enhanced for further 5 to 6 years after repairs, subject to the condition of monitoring and periodic maintenance every year.

23. On 24.11.2020, a Division Bench of the Bombay High Court passed the impugned order granting liberty to the Respondent No.1 to commence the work of removal of adjoining wall with the assistance of M/s Shetgiri and Associates, Architects, at his own risk and costs. The said work was however to be carried out in the presence of the officials of Corporation.

24. In our considered view, the High Court has committed a serious error in directing removal of a wall with the assistance of M/s. Shetgiri and Associates, when there were conflicting reports including an earlier report of the Technical Advisory Committee on the basis of the opinions of other Architects, declaring the building to be of the C-1 category.

25. Even the Report of Shetgiri and Associates, relied upon by the Respondent No. 1, provided: -

“13. Brief Description of Repairs to be done:

(c) External Plaster External Plaster & Structural repairs:

External Plaster to be replaced with new plaster.

(d) Structural Repairs Structural Repairs:

Damaged Structural
members like load
bearing walls and its
plaster, brick pillars,
beams and slabs, where
ever exists, should be
strengthened and its
repairs should be
carried out immediately.

The said structural
repairs should be
carried out as per the
direction and under the
supervision of

registered structural engineer.

14. Conclusions of Consultants-

The structure has suffered damages to the external walls & RCC elements at various locations.

Leakages/capillary action on external wall is due to sub soil water pressure. The said external walls should be repaired immediately with PCC bedding and damp-proof course under it so as to protect it from sub soil action. During the course of repairs, propping and barricading is to be provided.

Damaged Structural members like load bearing walls and its plaster, brick pillars, beams and slabs, where ever exists, should be strengthened and its repairs should be carried out immediately.

The said structural repairs should be carried out as per the direction and under the supervision of registered structural engineer.

Many of the observations mentioned above needs immediate attention. Any further delay even if marginal to initiate the major restoration and repair works could lead to a part or complete failure and leading to mishaps, even without warning signals. This could be serious & fatal to both the occupants of the building structure as well as the passerby's

(sic passers by) in close proximity to the structure."

26. It is well settled that the High Court exercising its extraordinary writ jurisdiction under Article 226 of Constitution of India, does not adjudicate hotly questions of facts. It is not for the High Court to make a

comparative assessment of conflicting technical reports and decide which one is acceptable.

27. Moreover, the High Court has overlooked the Notes and Limitations mentioned in the report of Shetgiri and Associates, set out hereinbelow:

"1) The report is based on visual inspection done as on date, of an accessible area and data provided by client and ND tests results. This report serves a basis of preliminary health check-up of structure and should not be treated as stability certificate of the building.

2)

3) Inspection of Substructure was not possible and hence condition of structure below plinth cannot be commented on.

4) The observations made in Structural Audit Report are made during the time of Audit. We shall not be held responsible for any changes in Structural condition and/or damages to the structure and/or overloading, at any point of time in case observed.

5) It is requested that the concerned authority must carry out regular maintenance of the structures, sewer lines & premises to avoid any further severe damage to the structure at a later stage.

6)

7) It is extremely important to add here that the

structure is almost more than 45 years old and has majorly outlived its economic life.

In olden days, especially in 1900's, the Indian Standard codes were basic in nature as compared with what is adopted in the present time. Even if the decision of restoration is adopted, uplifting the structure to an extent that it would be at par with modern structure's in terms of the strength, design & safety standards and also the I.S codal provisions especially seismic and wind analysis would be practically ruled-out and possible only if entire structural upliftment is carried out within each and every corner of the structure, which is extremely difficult in case of repair works considering the massive repairs cost involved. Moreover, the foundations of the structure cannot be restored.

8)

9) The report is only limited to the captioned suit

building and no other Flat/s, building, structure or Plot of land, premises, room, unit, site, area, division, sub-

division or any other surrounding area of the plot or structure has been given any weightage or has been covered in the report.

10) The documents presented before us, if any, are considered while furnishing the said report as mentioned. However, the supporting underlying documents, which are not mentioned in our report and unknown to us, could not be examined or analyzed. As such, our report is based only on the documents if any perused by us and not on any underlying supporting documents if any, not produced before us."

28. The High Court grossly erred in law as well as facts in passing the impugned judgment and order overlooking the fact that the report of Shetgiri and Associates was not a certificate of stability as stated in the report itself in Note 1, extracted above.

29. It is not understood how the High Court could have been satisfied that the stability of the building could be restored by repair in the manner directed. The High Court patently erred in passing the impugned order. The impugned order cannot be sustained.

30. It is recorded that the appellant being the land lord has given a proposal to the Respondent No.1, similar to the proposal offered to the other tenants. The proposal, as contained in Annexure P-6 to the Additional documents filed on behalf of the appellant, which is a very reasonable proposal, is extracted hereinbelow for convenience: -

"A) I am the owner of the property which is subject matter of the Special Leave Petition No. 1837 of 2021 before the Hon'ble Supreme Court of India. The respondent No.1 is the occupant/tenant of the room no.21 admeasuring 28 sq. Mtr. As per the area statement issued by the MCGM.

B) Now the MCGM have issued orders dated 02.07.2020 to the owner and the Respondent No.1 along with all other tenants / occupants in the building to vacate their houses and evict the building on the Subject Property.

C) As per the area certificate issued by the MCGM, it has protected the area of the Respondent No.1 and all other tenants. D) It is to be noted that out of 24 tenants, 15 tenants have executed letter of consent with the petitioner owner and have already vacated their subject premises. Out of 24 tenants, 15 tenants have entered in to MOU with the petitioner for accepting the alternate accommodation and undertaking to vacate the subject premises.

E) In view of the aforesaid, Respondent No.1 should immediately hand over the possession of its subject house to the Petitioner so that the MCGM can demolish the subject property and petitioner can start the process of redevelopment of the subject property.

F) I as the owner of the subject property assure and undertake as under:-

1. that I am accepting Respondent No 1 as a legal tenant.

2. I undertake that "Subject Property" will be redeveloped after all the tenants have been evicted from their rooms. I undertake that I will try to complete the redevelopment work of the new building to be constructed on the Subject Property within 2 years from the date of receipt of the Commencement Certificate for redevelopment. However, in the event, if I could not complete the project within 2 years because of the natural calamities or the reasons beyond the control of the petitioner, in that event, I undertake to pay rent/transit accommodation as per the choice of the respondent No.1 till the project the completed and competition certificate is issued by the appropriate authority.

3. I undertake that I will provide monthly rent at the rate of Rs.18 per sq. ft. X authorised/legal area of the subject house of the respondent no.1 from the date of vacaton of the subject house by the Respondent No.1 till receipt of the completion certificate from the MCGM.

4. I also undertake to provide 11 months' rent in advance by post-dated cheques. Also, I undertake to provide Rs.2000/- towards freight.

In the event; the respondent no.1 is not willing to take rent as offered in that event I undertake to provide alternative accommodation in the transit camp from the date of vacaton of the subject house till the completion certificate issued by the appropriate authority.

5. I undertake that as soon as the construction of the proposed building is completed and upon receipt of Occupation Certification from the appropriate authority, I shall give possession of newly constructed Alternate Accommodation flat equivalent to the authorised / legal area which mentioned in the 'Area Certificate' and Assessment Extract in respect of "subject house" in the

proposed building.

6. I undertake that I will be providing newly constructed flat to the respondent no.1 in the newly constructed redeveloped building, equivalent to the authorised / legal area which mentioned in the ‘Area Certificate’ on ownership basis and I shall not have any right over the said flat once it is handed over to the respondent no.1.

7. I undertake that I will not charge any amount from the respondent no.1 towards new Alternate Accommodation which is to be provided in the proposed building.

G) I have already submitted the proposal before the competent authority for the redevelopment of the subject property and I am awaiting for the approval.

H) I assure that all the permissions & no-

objection certificates required for the new building under this redevelopment as well as all legal action will be taken by me.

I) I assure that no legal charges, stamp duty, registration fee & other charges will be levied to Respondent No.1 for all redevelopment costs and the full cost will be borne by me.

J) For this redevelopment, the deposit amount for water tax, property tax & sewerage tax will be paid by me up to obtaining Occupation Certificate.

K) I guarantee that I will pay extra rent for the extra time taken for redevelopment due to natural calamities, strikes, and other reasons.”

31. In terms of the aforesaid proposal, the Appellant is to provide area equivalent to the area now under occupation of the Respondent No.1 after demolition and reconstruction of the building, on ownership basis free of charges. In the interregnum, the Appellant shall provide monthly rent @ Rs.18/- per sq. mtr for area corresponding to the authorized legal area, now in occupation of the Respondent No.1, from the date of vacating till the date of completion certificate. Eleven months' rent shall be given in advance by post-dated cheque.

32. In addition, the appellant also undertakes to provide Rs.2000/- towards freight charges. In the event, the Respondent No.1 is unwilling to accept the rent, the appellant undertakes to provide alternative accommodation in a transit camp, from the date of vacating of the premises in question till the issuance of completion certificate by the appropriate authority. Needless to mention that the appellant shall abide by the conditions of the offer, if the Respondent No.1 agrees to accept the same.

33. The appeal is, accordingly, allowed, for the reasons discussed above. The impugned final judgment and order is set aside and the writ petition is dismissed.

34. All interim orders stand vacated.

35. Pending applications, if any, stand disposed of accordingly.

.....,J.

[INDIRA BANERJEE],J.

[V. RAMASUBRAMANIAN] New Delhi;

July 20, 2021.

ITEM NO.2

Court 10 (Video Conferencing)

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal(C) No(s). 1837/2021 (Arising out of impugned final judgment and order dated 24-11- 2020 in WP-LD-VC No. 163/2020 passed by the High Court of Judicature at Bombay) SHUBHAS JAIN Petitioner(s) VERSUS RAJESHWARI SHIVAM & ORS. Respondent(s) (IA No. 14675/2021 - EXEMPTION FROM FILING AFFIDAVIT IA No. 13133/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT IA No. 13134/2021 - EXEMPTION FROM FILING O.T. IA No. 14673/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES) Date : 20-07-2021 These matters were called on for hearing today. CORAM : HON'BLE MS. JUSTICE INDIRA BANERJEE HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN For Petitioner(s) Mr. Dilip Annasaheb Taur, AOR For Respondent(s) Mr. Preteesh Kapur, Sr. Adv.

Ms. Vishakha, Adv.

Mr. Karthik Rajshekhar, Adv.

Mr. Atul Kumar, AOR Mr. Siddharth Bhatnagar, Sr. Adv.

Ms. Pallavi Pratap, Adv.

Ms. Aruna Savla, Adv.

For M/S. Pratap And Co., AOR UPON hearing the counsel the Court made the following O R D E R
Leave granted.

The appeal is allowed for the reasons discussed in the signed non-reportable judgment. The

impugned final judgment and order is set aside and the writ petition is dismissed.

All interim orders stand vacated.

Pending applications, if any, stand disposed of accordingly.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(MATHEW ABRAHAM)
COURT MASTER(NSH)

(SIGNED NON-REPORTABLE JUDGMENT IS PLACED ON THE FILE)