2024:BHC-OS:19666-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 30632 OF 2024

Mr. Khimjibhai Harjivanbhai Patadia,]
Age: 67 years, Occ. Business,]
of Mumbai, Indian Inhabitant,]
residing at 193, S.V. Road,]
Kandivali (W), Mumbai – 400 067] ...Petitioner

V/s.

1. Municipal Corporation of Greater]
Mumbai,a Corporation constituted]
under the Mumbai Municipal]
Corporation Act, 1888, (BMC Act)]
having its Head Office at CSMT, Fort,]
Mumbai – 400 001.]

2. Asst. Commissioner, MCGM,]
R/South Ward, M.G. Cross Road No2,]
Kandivali (W), Mumbai -67.]

3. Designate Officer,]
Executive Engineer (B&F) R/S Ward,]
MCGM, M.G. Cross Road No.2,]
Kandivali (W), Mumbai-67.]

4. Remi Bubna Realtors LLP.,]
a Limited Liability Partnership (LLP),]
constituted under the Limited Liability]
Partnership the Act, 2008,]
having its address at Remi House,]
Plot No.11, Cama Industrial Estate,]
Goregaon (E), Mumbai – 400 063.] ...Respondents

Mr. Ramchandra N. Kachave, for the Petitioner.
Ms. Sheetal Metkari, i/b Ms. Komal Punjabi, for Respondent Nos. 1 to 3-BMC.
Mr. Mayur Khandeparkar, with Ms. Dhawani Bokaria and Ms. Amita Jasani, i/b M/s. Purnanand & Co., for Respondent No.4.

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CORAM : A. S. GADKARI AND KAMAL KHATA, JJ.

DATE : 12th November, 2024

JUDGMENT (Per Kamal Khata, J) :

1) This Writ Petition, like many others challenges the decision of Technical Advisory Committee ("TAC"). Despite numerous rulings by the Apex Court and this Court settling such matters, this Petition too seeks protection of tenancy rights. It is alleged that the Landlord is attempting to evict the tenant (Petitioner) by devious means i.e. by declaring the building as dilapidated.

2) By a Notice dated 20th September 2024 the Petitioner was informed that he is required to vacate his premises as the Building is classified as C-1, meaning it must be vacated and demolished immediately.

3) The Petitioner, however, disputes the TAC report, alleging that it favours the Landlord. Consequently, the Petitioner seeks a directive from the Court to appoint an independent Structural Auditor to assess the building's actual condition.

Brief facts:

4) "Bubna Bungalow" is an 83-year-old structure located on S.V. Road, Kandivali (W), Mumbai 400 067.

4.1) The Petitioner became a tenant of the 1st floor and terrace of Bubna Bangalow through an Agreement dated 26 July

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1995, executed with the heirs cum executors of late Smt. Niranjanbai P Bubna, the original landlady, for a monthly rent of Rs. 700 .

4.2) The Petitioner claims that the landlords have been harassing him with an intention to evict him from the tenanted premises. There are multiple litigations between them. Respondent No. 4, the current landlord, became involved after purchasing the property from the heirs-cum-executors.

4.3) Respondent No. 4 also filed a suit for eviction on the ground of unauthorised construction but failed to secure any interim relief.

4.4) Subsequently, the BMC issued a notice under section 53(1) of the Maharashtra Regional and Town Planning Act 1966 (MRTP Act). This notice was challenged in Writ Petition No. 2460 of 2022, where this Court by an Order dated 22nd April 2024, reiterated that the apprehension of the Petitioner that his tenancy rights would be lost if the Bubna Bungalow was demolished for reconstruction/redevelopment, was unfounded. The Court cited the Supreme Court's judgment of in the case of *Shaha Ratanshi Khimji & Sons V/s. Kumbhar Sons Hotel Pvt Ltd & Ors [(2014) 14 SCC 1] and Chandralok People Welfare Association V/s. State of Maharashtra & Ors [(2023) SCC OnLine Bom 2300].*

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4.5) The Petition further notes that a Special Leave Petition No. 23992 of 2024 is currently pending before the Hon'ble Supreme Court.

4.6) In a subsequent Writ Petition No. 217 of 2023, the Petitioner challenged the TAC Report categorising the structure as C2-A, meaning it required repairs but did not need to be vacated. However, the building was not repaired as recommended.

4.7) A fresh Notice was issued and new Audit Report was sought from the Municipal Corporation of Greater Mumbai ("BMC"). Due to the conflicting reports produced by either side, the TAC was appointed to resolve the matter. By an order dated 21st August, 2024, this Court directed the TAC to hear both parties and communicate its decision.

5) The Learned Counsel for the Petitioner submits that, in view of the Order dated 14th August, 2024 where the parties were given liberty to challenge the TAC's decision, the present Petition was filed.

6) We have heard Mr. Kachave for the Petitioner, Ms. Metkari for Respondent Nos. 1 to 3 and Mr. Khandeparkar for Respondent No.4.

7) Upon perusal of the Order dated 14th August, 2024, we note the relevant portion of the last line, which reads as follows:

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"If any of the parties are aggrieved by the TAC's decision they shall be at liberty to challenge the same in accordance with law."

8) Mr. Kachave's argument that, this liberty permits filing a fresh Writ Petition is clearly untenable. This Court certainly did not intend to allow the filing of another Writ Petition. Challenging the TAC report would involve determining disputed questions of fact which cannot be entertained by a Writ Court. It is well established that disputed factual matters and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of Constitution. Such cases are best resolved through a civil suit as held by the Apex Court in *Joshi Technologies International Inc v Union of India (2015 7 SCC 728)*. Therefore, this Writ Petition is not maintainable.

9) A Coordinate Bench of this Court in the case of *Andheri Purab Paschim Cooperative Housing Society Limited V/s Municipal Corporation of Greater Mumbai and Another reported in (2023 SCC OnLine Bom 2522)* clearly held that, the purpose of establishing TAC was to provide a check and balance against the unilateral declarations of buildings as dilapidated. It was not intended to provide individuals with yet another cause of action in Writ law to

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upset findings of the TAC on factual and technical aspects. The Judgment dealt with similar cases that were decided in the past. In paragraphs 18 to 20 of the said Judgment the Court recorded the various Judgments and culled out the law from those decisions which is extracted herein for ready reference.

> *"18. In Tushar Ranglidas Notaria v. Municipal Corporation of Greater Mumbai a Division Bench of which one of us (GS Patel J) was a member considered the legal position in such situations. In paragraphs 3 and 4, the Court said:*
>
> *3. The conspectus of the petition is almost identical to nearly two dozen petitions we have heard and dealt with in the last two or three months :* ***tenants of a building that is over 30 years old having received an evacuation notice from the MCGM, and having taken no steps by themselves or by compelling the owner to carry out essential structural repairs, then rush to court and claim (a) that the building does not need demolition or evacuation; (b) that it is structurally sound; and (c) that the petitioner-tenants will continue to live there 'at their own risk' and will give an 'undertaking' to assume all liability, including to third parties.*** *In at least nine separate judgments delivered recently we have set out the law on the subject. We begin this discussion, therefore, by noting these decisions and summarizing the principles in law that apply to such a situation. The decisions are:*

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(a) Mahendra Bhalchandra Shah v. Municipal Corporation of Greater Mumbai, Writ Petition (L) No. 1755 of 2019, decided on 24th June 2019;

(b) Inderjit Singh Sethi v. Municipal Corporation of Greater Mumbai, Writ Petition No. 880 of 2018, decided on 9th July 2019;

(c) Ramesh Nathubhai Patel v. State of Maharashtra, Writ Petition No. 1500 of 2016, decided on 9th July 2019;

(d) Kutbi Manzil Tenants Welfare Association v. Municipal Corporation of Greater Mumbai, Writ Petition No. 2451 of 2018, decided on 16th July 2019;

(e) Sundar R. Gavaskar v. Municipal Corporation of Greater Mumbai, Writ Petition No. 602 of 2019, decided on 29th July 2019;

(f) Richard Gasper Mathias v. Municipal Commissioner, Municipal Corporation of Greater Mumbai, Writ Petition No. 2108 of 2018 decided on 1st August 2019.

(g) Vivek Shantaram Kokate v. Municipal Corporation of Greater Mumbai, Writ Petition No. 931 of 2019, decided on 19th August 2019.

(h) Khalil Ahmed Mohd Ali Hamdulay v. Municipal Corporation of Greater Mumbai, Writ Petition (L) No. 2147 of 2019, decided on 22nd August 2019. (i) Pandurang Vishnu Devrukhar v. State of Maharashtra, Writ Petition No. 2687 of 2018, decided on 27th August 2019 (pertaining to Municipal tenants).

4. The principles of law culled from these decisions are these:

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(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; Nathubhai Dhulaji v. Municipal Corporation;*

(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 decision in Shaha Ratansi Khimji & Sons v. Kumbhar Sons Hotel Pvt. Ltd.8 now makes it clear that the rights of tenants and occupants are unaffected by the required demolition.*

(c) Tenants have rights but also remedies to keep their structure in tenantable repair. We have referred extensively to Section 14 of the Maharashtra Rent Control Act, 1999. So far, we have not seen a single case where any tenant or group of tenants has invoked his or their rights under this Section.

(d) Section 353B casts an obligation not only on owners but also on occupiers of structures that are more than 30 years old to furnish a structural stability certificate. We have yet to see one so furnished unbidden, or, when demanded, one with anything meaningful in it.

(e) A Writ Court exercising jurisdiction will not substitute its own view for that of technically qualified

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experts. Equally, the Writ Court will not prefer the view of one expert over another.

(f) In order to succeed a Petitioner before the Court must be able to show that the impugned action suffers from Wednesbury unreasonableness, 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. 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. Courts are slow to draw dubious inferences from incomplete facts, especially when the imputations are grave and they are made against one who holds an office of responsibility in the administration. Mala fides are the last refuge of a losing litigant. Hence, whenever mala fides are alleged, we will demand proof. In case after case, we are told that the provisions of the MCGM Act are being abused by rapacious landlords in connivance with venal officers of the MCGM to order the demolition of the buildings that are otherwise structurally sound. We have yet to come across any such case. The argument is in generalities. Though it is an argument of mala fides, it is

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always made without any particulars whatsoever and we are asked simply to conjecture that this must be so. The law in regard to allegations of mala fides is well settled and we will draw no such general conclusion.

(h) Further, it is no answer at all, as we have held in Mahendra Bhalchandra Shah, to seek an order of status quo. We have discussed this aspect quite elaborately and have held that no such order can be passed by any Court without specific reference to the actual state of affairs at that moment. There can be no order of status quo against natural elements. It is one in one thing to direct to parties to a contract to maintain the status quo. This may be an order against one person seeking another's eviction. This has no application whatsoever to a situation where the complaint is about the deterioration day by day of the physical condition of a built structure exposed to the elements.

(i) ***We have also demonstrated in Mahendra Bhalchandra Shah that the entire trend in this Court in the recent past of obtaining undertakings from occupants allowing them to continue in occupation at their own risk is without any basis in law. The MCGM cannot contract out of a statute.*** *An undertaking by a Petitioner to a Court does not absolve the MCGM from its statutory responsibilities or liabilities under that statute.* ***If the undertaking is intended to function as some sort of an indemnity, then we have expressed the gravest doubts about any such undertaking ever being enforceable, let alone when the person who gives the***

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***undertaking himself or herself suffers an unfortunate mishap**.*

(Emphasis added)

19. A writ court is never assessing the merits of the decision - no writ court is in a position to decide a question of civil engineering or structural stability - but only the decision-making process; if there is indeed a 'decision' properly so called, i.e., one that determines the rights of parties. No rights of any party are ever determined by any TAC Report. It only assesses the structural condition of a building. Rights to parts or the whole of that building are entirely unaffected by the TAC Report.

20. In Hind Rubber Industries, we also observed:

*22. … **It is difficult to see how the occupants and tenants can hope to dictate to a property owner what should or should not be done with the property in an absolute sense. The rights of the occupants and owners to their premises are fully and sufficiently protected in law** under the MMC Act, the Development Control Regulations and also under Rent Control Legislation (as we noted in Tushar Notaria and previous cases). Only because the building is demolished it does not follow that the rights of occupancies or tenancies will be lost. Quite the reverse : the obligations of the owner are well settled in law. It is pointless repeating these again and again. **There is, as the TAC noted, an element of public interest or public law because a dangerous building presents a threat to the occupants inside it. But there is an even larger public interest involved, one with which***

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> ***courts are routinely confronted, and that is the possibility of danger caused to others, i.e., outsiders and passers-by and consequent disruptions. We have had any number of instances of such collapses specially in the annual monsoon period. There is always some loss of life.***
>
> *24.* ***Therefore, while we do not think that a TAC report such as this can be invalidated merely because there is a rival report. Once we have rejected the absolutist argument that a report that recommends repairs is always to be preferred, and also found no procedural infirmity, the resultant order must inevitably be of rejection of the Writ Petition****. …*
>
> *(Emphasis added)*

9.1) It categorically held in Clause 4(e) (highlighted in bold and underlined hereinabove) that, a Writ Court exercising jurisdiction will not substitute its own view for that of technically qualified experts. Equally, the Writ Court will not prefer the view of one expert over the other.

9.2) This Judgment has binding effect and we fully concur with it. As a Coordinate Bench, we are obligated to adhere to that decision.

10) Mr. Khandeparkar, with evident exasperation, pointed out, that this is in fact, the third round of litigation in Court initiated by this Petitioner. The averments of the Petition itself evinces the same. Considering that the law on the issue is well-settled, the

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Petitioner's apprehension of his tenancy rights being jeopardized, is unfounded, so is the Petition.

11) By an Order dated 22nd April 2024, in Writ Petitions No. 2460 of 2024 with Writ Petition No. 217 of 2023, the Petitioner's apprehension that he will lose his tenancy was decisively negated, with clarity provided by citing judgments of the Hon'ble Supreme Court and our Court. Despite this order, the present Petition is founded on the apprehension that the Respondent No.4 is attempting to jeopardize the Petitioner's tenancy rights by evicting him by questionable means – in his words "by hook or by crook". This claim is untenable. It is abundantly clear that the Petitioner's tenancy rights are protected even in the event of the building's demolition for reconstruction or redevelopment. Moreover, the tenants' right to undertake reconstruction in the event of landlord's failure to do so has also been firmly established.

12) Another important aspect pertains to the owner's right to demolish a building that is in a perfectly sound condition and redevelop it, is also acknowledged by a co-ordinate bench of this Court in the case of *Anandrao G Pawar v Municipal Corporation of Greater Mumbai and Ors (2023 SCC OnLine 2534)* in paragraph 15 Court has held as under:

> *"15. But we do not even need to go that distance. Let us take the case at its extremity, namely, that the building*

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> *is in perfectly sound condition. The owner wishes to redevelop it. Can a tenant be then heard to say that the owner is precluded from undertaking a full-envelope redevelopment and from enjoying the benefits and fruits of ownership of that property just because a few tenants believe that it can be 'repaired'? We believe the answer to this question in law, on facts and in equity, is firmly in the negative and against the tenants".*

(Emphasis supplied)

13) This is the law of the land. The Petitioner was not only presumed to be aware of it but was also explicitly informed through the Order dated 22nd April 2024. Despite this, he has chosen to file present Petition, claiming that liberty was granted to file another Petition on the same apprehension that his rights as a tenant would be affected.

14) In view of the above, we find it appropriate to dismiss this Petition with exemplary costs, in the hope that it serves as a deterrent against frivolous and mischievous Petitions. Such Petitions are filed with the sole intention of delaying the redevelopment of old and/or dilapidated structures, driven by ulterior motives for better monetary terms from the landlords/developers. This is particularly egregious given that the landlords bear a statutory obligation to maintain the building, with criminal consequences for any failure to act.

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15) We are, therefore, inclined to impose exemplary costs in the sum of Rs. 5 Lakhs for the reasons stated hereunder:

15.1) It is abundantly clear to us that this Petition is filed with a view to obstruct the redevelopment. Six out of seven tenants have vacated. The Petitioner, however, has successfully managed to delay vacating for over five years. This is evident from the submissions of Respondent No. 4, as recorded in the Report dated 18th September, 2024, issued by the BMC and annexed to the Petition.

15.2) The building, constructed in 1940, is approximately 83 years old. As early as 2019, the owners had submitted a Structural Audit Report categorizing the building under C-1 category. The litigation had since ensued, as detailed above. The land in question admeasures around 4400 sq mtrs. Even with the minimum Floor Space Index (FSI) of 2 the reconstruction would result in a structure of around 88,000 square feet. The property in question is situated in a prime location in the city of Mumbai and has huge monetary potential. The Petitioner is well aware of the said fact and therefore is trying to create hurdle in the development of the suit property. There is absolutely no justification for the Petitioner, as a tenant, to deprive the landlord of the legitimate fruits of redeveloping his property.

16) From a review of Judgements over the past years, we observe such litigations often amount to a sophisticated form of

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extortion. There necessarily must be an effective deterrent to this obstructionist behavior by tenants.

17) No Court, whether a Writ Court or any other, can be permitted to become a tool for tenants to obstruct the genuine redevelopment efforts of property owners. Filing Writs Petitions has increasingly become the quickest and cheapest method to stall redevelopment projects, with little or no downside for tenants. It is at a meagre expense – a calculated gamble. If the tenant succeeds, the rewards are substantial; if dismissed the financial loss is negligible. For instance, even assuming that filing a Writ in the Bombay High Court costs a tenant a certain minimum amount of rupees, the resulting delays can impose significant financial burden on landlords or developers, including mounting costs for alternate accommodations. In many cases, developers are forced to capitulate due to these pressures, making such actions an attractive proposition for tenants, where redevelopment projects are often worth crores of rupees.

18) In this case, two prior Orders explicitly clarified that the tenants' rights were protected. These Orders also established that even a completely sound building could be demolished for redevelopment by the owner. Thus the Petitioner's contention that the landlord seeks to evict them "by hook or by crook" is baseless,

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given the landlord's legal right to evict tenants for redevelopment purposes.

19) In simpler terms, we question:, *What is the harm, if the Petitioner tenants' rights are protected and he receives a better, newly redeveloped premises – probably on ownership basis, in exchange of a premise in an 83-year-old building?*. The logic behind resisting redevelopment is puzzling. This behavior strongly suggests there is something more than meets the eye. No person, we believe, would prefer to remain in an old, dilapidated building willing to incur recurring maintenance costs every year, rather than opting for redevelopment.

20) Assuming the tenant would offer to pay for the area occupied by him - *but what about the other tenants and common areas of the building*? That is the responsibility of the landlord. Now assuming, the tenant pays for the whole maintenance, *would he not deprive the Landlord/developer to redevelop?*

21) In many cases we have observed/noticed that, tenants often demand reinstatement at the same location, monetary compensation and/or additional space or in some cases – rightly, parity with other tenants. Landlords, on the other hand, may face logistical limitations in accepting or refusing such demands.

22) Such matters are purely contractual and must be resolved between the developer and the tenant. We do not, in any

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manner, suggest that landlords or developers are incapable of taking undue advantage of tenants who may be unaware of their rights protected by Statute and settled law.

23) However, Courts cannot be misused as instruments to pressure landlords or developers into granting tenants' undue advantages. Unfortunately, cases like this have become routine. Writ Petitions are filed, projects are delayed and Courts repeatedly affirm that tenancy rights are protected, allowing redevelopment to proceed.

24) It is precisely to counter these sort of petitions that we deem it necessary to impose substantial costs. High-stake cases warrant high deterrent costs to discourage frivolous and mischievous Petitions. Without such measures, the judicial process risks becoming a cheap tool for unscrupulous litigants seeking to exploit it for personal gain.

25) In view of the above deliberation, Petition is dismissed with cost of Rs. 5,00,000/-, to be paid by the Petitioner to the Armed Forces Battle Casualties Welfare Fund within a period of four weeks from the date of uploading of the present Judgment on the official website of the High Court of Bombay.

25.1) Details of the bank account for payment of cost are as under :-

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Account Name	:-	Armed Forces Battle Casualties Welfare Fund.
Account Number	:-	90552010165915.
Bank Name	:-	Canara Bank.
Branch	:-	South Block, Defence Headquarters, New Delhi – 110 011.
IFSC Code	:-	CNRB0019055.

25.2) It be noted here that, if the Petitioner fails to deposit the said cost within stipulated period as noted hereinabove, the Authorized Officer of the Armed Forces Battle Casualties Welfare Fund will be entitled to file an application for execution of the present Order and for recovery of the said amount before this Court through the learned A.G.P..

(KAMAL KHATA, J) **(A. S. GADKARI, J.)**

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