

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

WRIT PETITION (L) NO.1135 OF 2014

Municipal Corporation of Greater Mumbai : Petitioner  
V/s.  
State of Maharashtra & Ors. : Respondents

...  
Mr.S.U.Kamdar, Senior Advocate, with Ms Trupti Puranik for the Petitioner.  
Mr.D.J.Khambata, Advocate General for the State.

...  
CORAM: ANOOP V. MOHTA &  
A.A. SAYED, JJ.

DATE: AUGUST 13, 2014.

P.C.:

This Petition is filed by the Corporation, inter alia, seeking directions to issue appropriate guidelines in respect of buildings in Mumbai which are in a dilapidated and unsafe condition. Though the Petition has been substantially worked out, in view of the importance of the issues involved, we have kept the Petition pending, so as to issue further/additional guidelines, if necessary.

2. By an order passed by us on 23.06.2014, we have issued some interim guidelines in respect of dilapidated and unsafe buildings which have been categorized by the Corporation as 'C-1'. In the said order, in clause 9(b), we have directed that before classifying a building under category C-1, the Corporation shall conduct their own independent inspection and assessment with the help of the Engineers of their Department. That direction was issued so as to obviate a situation where merely on the basis of a structural audit report submitted by one of the parties and inspection by its officers, the Corporation

would categorise the building as 'C-1'. We direct the Corporation to place on record, by way of an affidavit, the relevant Circular/procedure under which the buildings are categorised as C-1, C2-A, C2-B, C-3, etc., by the next date.

3. In the present assignment, we have come across several Petitions challenging the notices issued by the Corporation under section 354 of the Mumbai Municipal Corporation Act, 1888, to pull down dilapidated and unsafe buildings. It is noticed that in respect of re-development of buildings of Co-operative Housing Societies, the State of Maharashtra has issued directions/order dated 03.01.2009 under section 79A of the Maharashtra Co-operative Societies Act, 1960. In respect of Municipal buildings (or buildings belonging to other authorities) in our order dated 23.06.2014, we have recorded that it shall be their duty to provide temporary alternate accommodation to the tenants/occupants until the Corporation (or the authority) re-develops the building. In respect of privately owned cessed buildings in the island city, the provisions of the Maharashtra Housing and Area Development Act, 1976 ('MHAD Act' for short) are applicable and MHADA is required to provide temporary alternate arrangement to the tenants/occupants in transit camps till the building is redeveloped. It is another story that some of such tenants/occupants have been languishing in those transit camps for years together. In case of redevelopment of such cessed buildings provisions of Development Control Regulation for Greater Mumbai, 1991 ('DCR' for short)

are applicable which provide for schemes for additional FSI as incentive for redevelopment. However, insofar as privately owned non-cessed buildings are concerned, it appears that there is no mechanism/scheme in place to provide for temporary alternate accommodation and MHAD Act is not applicable and it appears that the schemes for additional FSI under DCR also do not apply to redevelopment of such non-cessed buildings. Consequently, in such privately owned non-cessed buildings, unless the landlords and the tenants/occupants arrive at an amicable arrangement, there is a stalemate/deadlock in respect of redevelopment of the building. In such a situation, the tenants/occupants do not vacate and cling on to their premises (never mind the risk of their life in the event of collapse of the dilapidated building) as there is always a genuine and bona fide apprehension on their part whether the landlord would ever redevelop the building and within what time frame and as to what shelter they would have over their head during the interregnum if the building was to be redeveloped. The owners and the tenants/occupants many a times are at loggerheads and unable to resolve the issue. The tenants/occupants sometimes make unreasonable and ridiculous demands whereas at times the landlords wait for a situation where the tenants/occupants are required to vacate forcibly pursuant to the section 354 notice for demolition of the building and they are in a more advantageous position to negotiate and eventually offer a raw deal to the tenants/occupants for surrender of their premises to them. There may be several other reasons due to which the landlords and the tenants/occupants are unable

to come to terms. In the bargain, redevelopment is not possible and more often than not, the building is neglected and remains in a state of dis-repair and progressively deteriorates. As noted earlier, in such cases of non-cessed tenanted buildings, MHADA has no role to play and the schemes for additional FSI under DCR are apparently not applicable. As a matter of fact, even in cases of cessed buildings, where the schemes of additional FSI under DCR are applicable, there are cases where landlords are unwilling to redevelop the building and the tenants/occupants also are not able to garner the required 70 percent consent as required under the DCR, interalia for reasons of interse disputes of choice of developer, etc. There is thus a stalemate/deadlock in such cases also in respect of redevelopment of cessed buildings.

4. Under the MHAD Act as well as under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, there are provisions for acquisition of the properties by the State Government/Authorities. Under the Mumbai Municipal Corporation Act also, there are powers available with the Corporation under the amendments/insertions made to section 354 of the Mumbai Municipal Corporation Act to make appropriate schemes for improvement or declare an area as clearance area and develop building/s and also to acquire property for re-development. We understand that there is also a proposal by the State Government to even acquire private land coming in the way of the proposed cluster re-development project if the owner of that land

refuses to hand it over under the cluster re-development policy. There are provisions in the Disaster Management Act, 2005 for measures to be adopted for prevention thereof of any disaster and for rehabilitation and reconstruction. It appears that in the State Disaster Management Plan also, there is a reference made to rehabilitation and re-construction in respect of dilapidated buildings. As a matter of fact, in one of the Petitions before us [Writ Petition (L) No.1933 of 2014 – Shree Dipty Co-operative Housing Society Ltd. v. The Municipal Corporation of Greater Mumbai & Ors., which is disposed of], the Corporation had invoked the provisions of that Act in respect of a dilapidated building and issued notice accordingly. We also prima facie find that in CRZ Notification 2011 also, there is a reference made for the occupants (of dilapidated, cessed and unsafe buildings) to be accommodated in the new building after re-construction and it further provides for setting up of a High Level Oversight Committee.

5. A building would always have a shelf-life. By way of proper maintenance and repairs, that shelf-life can be extended for a few years. There would however always be a point where repairs are not feasible and the building is required to be pulled down and re-constructed/redeveloped. Majority of the old tenanted buildings in Mumbai have outlived their lives, whether cessed or non-cessed. Mumbai, which is said to be the financial capital of the country and come to be known as a world city, can ill-afford a situation where such old

buildings remain in a state of dis-repair and collapse, which unfortunately has become a common phenomenon each year, come monsoon. This not only consumes human lives, but also sends a wrong signal world over.

6. In the circumstances, we are of the view that it is time that the State Government steps in. It is expected of the State Government to take appropriate measures and set a mechanism in place and/or consider bringing out an appropriate legislation/policy, if necessary, to salvage the situation and address the apprehensions and concerns of the tenants/occupants (of such dilapidated and unsafe buildings) or for that matter the landlords/owners (who are often subjected to criminal prosecution) and all concerned and to prevent loss of human lives. Passing orders by Court of forcible eviction of tenants/occupants of dilapidated and unsafe C-1 category buildings (so as to prevent loss of human lives) and consequent demolition of such buildings and/or providing some conditions in IOD as regards commencement of construction by landlords/developers (so as to protect the interest of the tenants/occupants) in terms of our order dated 23.06.2014, is no solution. It is only a transient measure. Such situations can hardly be left in a state of flux. It needs to be ensured that redevelopment of such dilapidated and unsafe buildings, whether cessed or non-cessed, takes place at the earliest and the tenants/occupants are put back in possession of the newly constructed building within a stipulated time frame and the landlords too get their due.

7. We are conscious of our powers under Article 226 of the Constitution as also the limitations of the State Government. However, at the same time, we need to highlight this issue and cannot be unmindful to this human problem and turn a blind eye. The fact that presently there is no legislation or policy in place in respect of redevelopment of tenanted non-cessed buildings, is not an answer to the problem. Prima facie, we find that even in case of cessed buildings in the island city, the provisions of MHAD Act have been unfruitful so far as redevelopment is concerned and in our view, there has to be some mechanism in place to take things forward in the event the landlords or for that matter, the tenants/occupants (in case of their inability to procure 70 percent consent as required under DCR) are not able to redevelop the building/s by taking advantage of the schemes under the provisions of DCR. There is, in our view, a need for some serious introspection.

8. We direct the State Government to place on record a roadmap addressing the issues discussed above by way of an Affidavit.

9. Stand over to 10 September 2014.

(A.A. SAYED, J.)

( ANOOP V. MOHTA, J.)