Atul

# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## ORDINARY ORIGINAL CIVIL JURISDICTION
## WRIT PETITION (L) NO. 1755 OF 2019

1. **Mahendra Bhalchandra Shah**
Aged 54 years, Indian Inhabitant,
Occ.: Business having Address Room No. 15, Lalji Vanmali Chawl, Bapu Bagwe Road, Dahisar (West), Mumbai 400 068

2. **Vijay Pranlal Pathak**
Aged 63 years, Indian Inhabitant,
Occ.: Retired having Address 12, Lalji Vanmali Chawl, Bapu Bagwe Road, Dahisar (West), Mumbai 400 068

3. **Tarun Mulchandas Patel**
Aged 60 years, Indian Inhabitant,
Occ.: Business having Address Room 11, Lalji Vanmali Chawl, Bapu Bagwe Road, Dahisar (West), Mumbai 400 068

4. **Shailesh Mulchandas Patel**
Aged 58 years, Indian Inhabitant,
Occ.: Business having Address Room No. 10, Lalji Vanmali Chawl, Bapu Bagwe Road, Dahisar (West), Mumbai 400 068

5. **Vinod Mulchandas Patel**
Aged 62 years, Indian Inhabitant,
Occ.: Business having Address Room
No. 09, Lalji Vanmali Chawl, Bapu
Bagwe Road, Dahisar (West),
Mumbai 400 068 ... **Petitioners**

*~ versus ~*

1. **Municipal Corporation of Grater bombay**
The Municipal Officer & the
Corporation having its office at
Mahapalika Marg, Opp. CST Station,
Fort, Mumbai 400 001

2. **The Assistant Municipal Commissioner,**
R/North Ward, M.C.G.M. Office,
Dahisar (West), Mumbai 400 068

3. **The Designated Officer,**
Assistant Engineer (Building &
Factory), R/North Ward, M.C.G.M.
Office, Dahisar (West),
Mumbai 400 068

4. **Hydraulic Engineer (Water Works,**
R/North Ward, M.C.G.M. Office,
Dahisar (West), Mumbai 400 068

5. **Adani Electricity**
Having electricity supply body
Corporate, having its Branch office at
near Shankar Lane, S.V. Road,
Kandivali (West), Mumbai 400 067

6. **NIKUNJ REALTORS**
Builder & Developer having office at
105/106, Siddeshwar Apartmetn
Poisur Gymkhana Road, L. T. Nagar,
Kandivali (West), Mumbai 400 067 ... **RESPONDENTS**

**APPEARANCES**

| | |
|---|---|
| **FOR THE PETITIONERS** | **Mr J G Damani**, *Advocate, a/w Ms Manasi Pandit.* |
| **FOR RESPONDENTS NOS 1 TO 4** | **Mr AY Sakhare**, *Senior Advocate, with Ms Rupali Adhate* |
| **FOR RESPONDENT NO. 5** | **Mr Satish Kamat**, *Advocate, a/w Mr Vighnesh Kamat.* |
| **ALSO PRESENT** | **Mr Rohan Nipurte**, *Assistant Engineer (B&F), R/N Ward*<br>**Mr S Jadhav**, *Executive Engineer, R/N Ward* |

**CORAM : S. C. Dharmadhikari & G.S.Patel, JJ.**

**DATED : 24TH JUNE 2019**

**ORAL JUDGMENT:** (*Per GS Patel, J*)

**1.** We have heard Mr Damani for the Petitioners at great length in this writ petition under Article 226 of the Constitution of India. We have also heard Mr Sakhare, learned Senior Counsel, for the Municipal Corporation of Greater Mumbai ("**MCGM**") and its

officers, Respondents Nos. 1 to 4. With the assistance of appearing counsel, we have carefully considered the materials on record. For the reasons that follow, we are not inclined to grant the Petitioners relief. We have rejected the writ petition.

**2.** The facts are few, and quickly noticed. The five Petitioners claim to be tenants in occupation for nearly three decades of tenements in a ground floor chawl called the Lalji Vanmali Chawl at CTS No. 118 (pt) at Bapu Bagwe Marg, Village Dahisar, Taluka Borivali, Mumbai. These tenements, the Petitioners say, are seven structures with 16 rooms. The structures have pitched roofs covered with Mangalore tiles. We note this because Mr Damani based at least one argument on the built form of these structures. We will turn to that presently.

**3.** In 2006, the 6th Respondent, Nikunj Realtors, said to be a firm of developers, acquired the plot on which these structures stand. The previous developer, Model Construction, had constructed two buildings called Maheshwar-I and Maheshwar-II here. The original owner was one Rambhabai Vanmali. She gave powers of attorney to these developers. In 2006, Model Construction is said to have in some way transferred its rights to the remaining development to the Nikunj Realtors, which used to collect rent from the Petitioners. Some of the earlier occupants or tenants of this chawl were shifted to Maheshwar-I and Maheshwar-II. These Petitioners remained. They say they were never approached for re-accommodation. By 2006, there are said to have been only 10 tenants continuing in this chawl. In 2018, Nikunj Realtors apparently struck some sort of deal with some of these 10

tenants and took over three tenanted premises. These were demolished. The Petitioners and their structures remained on site. We are not concerned with any contractual dealings between Nikunj Realtors and the Petitioners.

**4.** The petition says that a notice dated 19th December 2018 was pasted by officers of the MCGM on the chawl in question. That notice said the chawl was dangerous, and categorised by the MCGM as 'C-1', i.e. in imminent danger of collapse and therefore requiring urgent intervention. This, according to the Petitioners in paragraph 7, meant propping. The notice also said that if the tenants and occupants did not agree with this structural assessment, they could submit their own consultants' structural report within 30 days. The Petitioners say they did get the structure or structures independently assessed by one DARV Engineers and Consultants Pvt Ltd ("**DARV Engineers**") on 27th December 2018. This was forwarded to the MCGM on 17th January 2019 by the Petitioners' advocate. The Petitioners claim they received no response. They were not told that the matter had been referred to the MCGM's Technical Advisory Committee or TAC. According to the Petitioners, there was no further action. Instead, they say, the MCGM abruptly and without forewarning issued a notice dated 4th April 2019 under Section 354 of the Mumbai Municipal Corporation Act, 1888 ("**the MMC Act**") and had it pasted on the site. There was no individual notice. The Petitioners' advocate wrote to the MCGM on 18th April 2019, drawing attention to the DARV Engineers' report, demanding a reference to the TAC and asking for the date of the TAC meeting. According to the Petitioners, there is no reply to this either.

**5.** On 31st May 2019, the MCGM put up a board saying that the chawl (described as a 'building') was declared to be in the 'C-1' category, and that the occupants would be evacuated on account of the danger to life and property that the dilapidated and ruinous condition of the structure posed. There is an allegation in paragraph 11 that some site meeting was proposed, but since this is undocumented, it need not delay us any further.

**6.** According to the Petitioners, there followed yet another notice, now dated 3rd June 2019. This was addressed to the owner, Rambhabai Lalji Vanmalidas. It threatened disconnection of water and power supply. The Petitioners say they were given no notice of this threatened disconnection. On 6th June 2019, say the Petitioners, a MCGM officer arrived on site with a team and forcibly cut off the water and power supply.

**7.** Hence this petition. What the Petitioners seek is a quashing of all these notices and evacuation orders by a writ of certiorari; then a writ of mandamus to restore the water and power supply; and interim reliefs pending the petition.

**8.** The matter was listed on 14th June 2019. At that time, there was no Affidavit in Reply from the MCGM. We were shown a report of the TAC meeting. There was also an attendance sheet. One of the persons said to have been in attendance at the TAC meeting was one Ravindra Utagi of DARV Consultants, the consultancy engaged by the Petitioners. Utagi was said to have signed the attendance sheet. Noting this, we called for an affidavit with the relevant documents

from the MCGM. There is now such an affidavit dated 19th June 2019. Mr Damani has, in response, prepared a bulky Affidavit in Rejoinder affirmed on 20th June 2019 by the 4th Petitioner. It is said to have a compilation of documents obtained by the Petitioners under the Right to Information Act.

**9.** We will first take up the MCGM affidavit. It is filed by one Rohan Nipunte, the Assistant Engineer (R/N) Ward, Building & Factory Department. He is present in court today. In this affidavit, while he accepts that the chawl is a ground floor structure with a Mangalore-tiled pitched roof of 16 tenements, he says on visual inspection this was found to be in bad structural condition. Therefore, the MCGM issued its letter of 3rd December 2018 calling on the owner and occupants to carry out a structural audit. He says the owner did so, and submitted a report dated 10th December 2018 of Space Design & Development, a structural consultancy. This report said the chawl was too dilapidated to be repaired. Incidentally, we note that there is no dispute that the structure in question dates back to about 1960, i.e. it is nearly sixty years old. Then Nipunte refers to certain policy guidelines, to which we will turn shortly, to say that the MCGM issued a public notice calling for propping as an interim measure, and giving time to the occupants to produce their own structural assessment report. He says the Petitioners refused to accept personal service of this notice, and hence it was pasted. *There is absolutely no traverse of this averment in the Affidavit in Rejoinder*. On receiving the DARV Engineers report from the Petitioners, contending that the structure could be repaired and was therefore a 'C-3' category structure, and since this report conflicted with the Space Design report submitted

by the owner, the matter was referred to the TAC under the extant policy. The TAC inspected the site on 6th March 2019. It held a hearing on 15th March 2019 at 12 noon in the chamber of the TAC Chairman. Representatives of both Space Design and DARV Engineers were present. The latter was represented by Ravindra Utagi. He was informed of the meeting by email sent to the email id or address on the cover of his report. After hearing both sides, and considering both reports, the TAC concluded that the Space Design report was more accurate and acceptable. It therefore recommended that the structure be placed in the 'C-1' category and be brought down. The TAC report was sent to both structural engineers (i.e. Space Design and DARV Engineers) on 1st April 2019. A copy of that letter is annexed at page 131. There then followed the MCGM notice of 4th April 2019 to the owner to pull down the structure in 30 days. Again, the MCGM attempted to personally serve the Petitioners, and again they refused to accept service. *Again, this averment at page 118, paragraph (g) finds no traverse in the Affidavit in Rejoinder*. On account of this non-compliance, the MCGM disconnected power and water supply. The Petitioners were later served with a notice dated 30th May 2019 (copy at pages 145 and 146) to be held by the Assistant Commissioner to alert them to the dangers posed by the structure's condition, especially in view of the impending monsoon season. This notice, too, was pasted on the property.

**10.** *The 4th Petitioner's Affidavit in Rejoinder does not contain a specific traverse of the MCGM's Affidavit in Reply. Instead, what is alleged is that the entire record of the MCGM is not only false but consists of a set of fabrications and forgeries*. Mr Damani would have it that

these documents show that no notice was ever given to the Petitioners. It is also alleged that the communication to DARV Engineers, the Petitioners' Structural Consultants of the TAC meeting has been fabricated and is fraudulent. Mr Damani alleges that this notice was given on WhatsApp and such a novel method of service cannot be relied on. The Affidavit then alleges that on the attendance sheet the initials are not those of the representatives of the DARV Consultants and that there is no signature.

**11.** In itself, this raises an impermissible factual dispute. In our limited writ jurisdiction, we cannot go into such disputed questions of fact. If indeed the Petitioners alleged that everything is fabricated and forged, this will have to be proved by proper evidence. *Prima facie* the contentions do not appear to be correct. Intimation was given to Mr Ravindra Utagi not by WhatsApp. That was the mode of communication to the representative of Space Design, one Harshad Shinde. Ravindra Utagi was given notice at his email address, darvcpl@gmail.com and the very compilation produced by Mr Damani itself shows at page 312 that as regards Ravindra Utagi intimation was given on 7th March 2019 by email at this email address. Now this is the email address on DARV Engineers' structural report. More pertinently, this allegation is made without any disclosed basis by the 4th Petitioner. Mr Ravindra Utagi does not himself say that he received no notice, that he did not know of the TAC meeting, that he did not attend it, or that the details on the attendance sheet including the initial were not made by him. We also note that the attendance sheet contains Mr Utagi's mobile number. This mobile number is not to be found anywhere on DARV Engineers' report. Obviously, this could only have been provided by

Utagi himself. As to the attendance sheet, it is true that the attendance sheet shows only Utagi's initials and not his full signature, but that hardly makes a difference. It is not possible for us to enter into any great forensic handwriting analysis or to decide whether the letters "R" and "U" in the initials are sufficiently similar to those in Mr Utagi's full signature. That is a matter that clearly requires evidence.

**12.** Consequently, on facts it is not possible to accept Mr Damani's submission that everything in this file is a forgery and has been got up.

**13.** In itself this would have been sufficient to dismiss the writ petition. However, Mr Damani raises three other points and, therefore, we will proceed to consider them. He first argues that the chawl, being a ground floor structure with a tiled roof, it is not a 'building' within the meaning of the MMC Act. He argues that since the chawl allegedly has no slab or RCC column or beam and has only a Mangalore-tile roof and, therefore, too it is not a building. We do not know where Mr Damani gets this peculiar requirement from. Certainly there is nothing in the MMC Act to support any such interpretation. There is simply no substance to this argument. We only have to look at the definition of 'building' in Section 3(s), set out below, to see at once that the submission needs only to be stated to be rejected.

> (s) "building" includes a house, out-house, stable, shed, hut, tank (except tank for storage of drinking water in a building or part of a building) and **every other such**

**structure, whether of masonry, bricks, wood, mud, metal or any other material whatever**;"

(*Emphasis added*)

**14.** It also appears to us Mr Damani's submission that this is not a 'load-bearing structure' is based on a fatal misconception about structural engineering. Every built structure carries loads. This load or the weight of whatever is above, whether it be a floor or a roof, may be distributed in a variety of ways. The oldest and perhaps most common is to distribute the load along outer walls. These may be of different material. There is absolutely no basis for the statement that unless there is a concrete beam or a slab, the structure is not 'a load bearing structure'. The roof itself is a load and the walls bear its load. That is sufficient. In any case, Section 354 is not limited to load-bearing structures. Neither is the definition of a 'building', noted above.

**15.** The second submission by Mr Damani is that the TAC report itself is vulnerable for non-application of mind apart from violation of principles of natural justice. He claims there was never any site visit by the TAC. Again, this is a factual dispute that we cannot examine. What Mr Damani forgets is that we are not concerned with the merits of the decision but only the decision-making process. Now the TAC report shows quite clearly that it was on account of the conflicting structural reports obtained by the owner on the one hand and the Petitioners on the other that a reference was made to the TAC in accordance with the extant policy. The TAC also considered the detailed report of the Executive Engineer of the R/North Ward as also the rival structural reports. Contrary to

the assertions by Mr Damani before us today, the TAC found that the structure did have load-bearing walls and that these were severely damaged with cracks in them and an exposure of bricks. The supporting wooden members were also damaged and cracked. There were termite problems. The floor tiles were damaged. The wooden framing of the pitched or sloping roofs was also damaged. There were open joints and gaps and severe leakages. There was extreme deterioration of the load bearing members. Considering all these factors, the TAC concluded that the structure had to be evacuated. The TAC did note that the structure used brick masonry as a structural member, but this needed to be tested for strength and durability. The mortar also had to be checked to ensure that it had not become brittle. There was no report before the TAC in regard to serviceability and the wooden structural members were also not checked. None of the structural engineers had checked the foundations. With specific reference to the DARV Engineers report, the TAC noted that the cement sand mortar had deteriorated and found that it was brown in colour. No component or ingredient of the cement could reach this colour except when it had deteriorated due to an admixture of soil or mud and the colour was probably derived from iron oxides contained in this soil. Not only are all these technical aspects that we are not entitled to examine in our limited remit under Article 226 of the Constitution of India, but the weight of authority is that it is not the province of a court to determine whether a building subjected to a Section 354 notice is truly ruinous.

**16.** The final submission is that the MCGM has violated its own policy. Again we find this to be incorrect. For the sake of

completeness, we proceed to outline the history and origins of this policy. While doing so, we will also look at the relevant statutory provisions, and notice, too, certain recent trends that fall short of actually constituting any sort of jurisprudence but seem to have become, nonetheless, common and frequent in such cases relating to dilapidated buildings.

**17.** The TAC-reference policy now in place owes its provenance to a Division Bench order of this Court passed on 23rd June 2014 in *Municipal Corporation of Greater Mumbai v State of Maharashtra and Ors*).[1] That order specifically said that, in the absence at that time of any policy, certain guidelines were necessary. The Court issued these transitory guidelines, pending the formulation of a policy. These guidelines required the MCGM to conduct an independent inspection and assessment before classifying a building as category C1. A structural audit was required. It was to be taken into account. The Corporation was to consider structural reports produced by owners or occupants. If these conflicted with those obtained by the MCGM or the owners, the Corporation was to refer the case to this TAC. The TAC was thus set up under this order. It was to be under the Chairmanship of the Director (ES&P) with at least three other members viz., the City Engineer, the Chief Engineer (DP) and Chief Engineer (P&D). The TAC was to make a visual inspection, consider the rival reports and then form its independent technical assessment as to whether repairs were possible or not.

---

**1** (2018) 5 AIR Bom R 460 : 2018 SCC Online Bom 816; Writ Petition No. 1080 of 2015.

**18.** There can be no doubt that guidelines in the 23rd June 2014 order were interim or transitory provisions pending the formulation by the MCGM of a policy of its own. That Writ Petition (along with an associated matter) was finally disposed by an order of 28th February 2018 (AS Oka J as he then was, and RI Chagla J). By this order the Division Bench accepted the statement made by MCGM on affidavit. The Bench directed that previous policy guidelines dealing with 'C-1' category buildings would stand modified to the extent provided in a note dated 22nd February 2018 prepared by the Chairman of the TAC.

**19.** We now find that a formal policy or set of guidelines has thereafter been issued on 25th May 2018. As a general principle we note that the entire scheme of reference to a TAC was simply to ensure transparency and accountability in the recommendation and assessment process of the ultimate fate of structure. The purpose was, evidently, to ensure that unscrupulous owners or landlords could not contrive one-sided report to the detriment of lawful occupants and tenants. Neither the interim provision nor the final policy was intended to create a separate appellate tribunal or a quasi-judicial authority. The policy itself is clear. It categorizes structures into those in private hands and those owned by the MCGM. Where privately owned buildings are more than 30 years old, or where there are complaints about the condition of a building of less vintage and the MCGM is of the view, on a visual inspection, that it is indeed dilapidated, a notice is to be issued requiring the owners, occupiers or tenants to carry out a structural audit. There are specific tests mentioned. There are default provisions. The structural audit is to be made known by displaying it on the premises. Tenants/occupants

who object to the audit are at liberty to obtain their own structural report within 30 days, which can be extended by another 15 days. If there are conflicting reports, the matter is referred to the TAC. Its decision is final and binding. The TAC must give a hearing to the contesting structural consultants. Then there are a series of steps set out to be followed if the TAC concludes that the building is unsafe and needs to be brought down. There are parallel provisions for MCGM-owned buildings.

**20.** The process before the TAC is of technical evaluation or an assessment. No rights of occupants or tenants in respect of the premises are in any way affected by this process; they cannot be. This is inter alia because the whole of the TAC edifice is founded on Section 354 of the MMC Act. This is how that section, as amended, reads:

> **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 neighbourhood thereof, the Commissioner may, by written notice, require the owner or occupier of such structure to pull down, secure or repair such structure Subject to the provisions of section 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.

(3) It is shall appear to the Commissioner that any building is dangerous and needs to be pulled down under sub-section (1), the Commissioner shall call upon the owner, before issuing notice thereunder, to furnish a statement in writing signed by the owner stating therein the names of the occupiers of the building known to him or from his record, the area in occupation and location of premises in occupation, possession of each of the respective occupiers or tenants, as the case may be.

(4) If he fails to furnish the statement as required by sub-section (3) within the stipulated period, then the Commissioner shall make a list of the occupants of the said building and carpet area of the premises in their respective occupation and possession along with the details of location.

(5) The action taken under this section shall not affect the inter se rights of the owners or tenants or occupiers, including right of re-occupation in any manner.

*Explanation.*— For the purposes of this section, "the tenant" shall have the same meaning as assigned to it in clause (15) of section 7 of the Maharashtra Rent Control Act, 1999".

**21.** As sub-section clearly shows, the rights of tenants and occupants are wholly unaffected by the operation of the Section 354. This is only logical. There is no warrant in law for the presumption

that if a building is deliberately brought down by human intervention, this will somehow end all tenancy and occupancy rights, but that if the building collapses as a result of years of neglect, these rights are somehow preserved.

**22.** Indeed, we believe this to be the settled law in regard to demolition notices including under Section 354 of the MCGM Act. We are fortified in this view by the observations of a Division Bench of this Court in a decision rendered nearly half a century ago in *Diwanchand Gupta v NM Shah & Ors.*[2] There, the Division Bench had four writ petitions against an order of the Chief Judge of the Small Causes Court. The litigation was in respect of a notice of 1965 under Section 354 of the MCGM Act 1888 served on owners of a ground and two floor tenanted building at Clive Road, Danabunder requiring them to pull the whole structure down to plinth level. The tenants of course resisted. One of their arguments before the Small Causes Court was that the demolition order was wholly unnecessary, and that the entire situation had been contrived by the owners to get rid of the tenants — precisely the apprehension Mr Damani voices five decades later. Considering the provisions of the MCGM Act and particularly Sections 354 to 507, and an earlier Division Bench decision of this Court in *Nathubhai Dhulaji v Municipal Corporation*,[3] the *Diwanchand Gupta* court found no substance in the opposition to the notice. It said that that all that the authority had to do was to act bona fide and not capriciously or with an improper motive. But if the authority considered the facts objectively, honestly and bona fide, that authority's satisfaction

---

**2** AIR 1972 Bom 316, KK Desai and GN Vaidya JJ.

**3** AIR 1959 Bom 332, YV Dixit & VM Tarkunde, JJ.

would not be open to challenge. As *Nathubhai Dhulaji* said, whether or not a building should be repaired or pulled down is a matter of which the authority was the sole judge. So long as the empowered agency confined himself to the limits of the statutory power conferred by Section 354, the discretion in that section did not lend itself to interference. The *Diwanchand Gupta* Division Bench said it was bound by the previous decision in *Nathubhai Dhulaji*. So are we. For, as the Division Bench observed in *Diwanchand Gupta*, the satisfaction on facts is that of the authorized officer under Section 354. It is not open to the Court (or any other authority), unless empowered by law to sit in judgment over that satisfaction, i.e. to substitute that opinion with its own. For, the power conferred under Section 354 is a power manifestly in the public interest. It is also a reasonable restriction on the right to carry on trade or business within the meaning of Article 19(1)(g) read with Article 19(6) of the Constitution, since the latter empowers the State to make any law imposing, in the interests of the general public, reasonable restrictions. It is never for the Court to satisfy itself whether the building was in a dangerous condition when the notice was issued. Thus, absent a clear demonstration of abuse of discretion, mala fides, caprice or perversity, a Court will not interfere to set aside such a notice. It is not done for the asking. It is certainly not done because an alternative view may be possible, or is one that some occupants find more palatable. It is, therefore, never for a court to decide whether a building is actually so ruinous as to require its demolition.

**23.** We believe we would do well to remind ourselves, and parties who petition us, of the half-century of wisdom in *Diwanchand*

*Gupta*. It has stood the test of time. We ignore its words at our peril. Here, too, we are being asked in exercise of our discretion under Article 226 of the Constitution of India to decide whether the building is truly ruinous.

**24.** Equally therefore, any apprehensions that the Petitioners' 'rights' in the property will somehow be obliterated along with the building's demolition are without basis. The same apprehension was expressed in *Diwanchand Gupta*. Nearly 50 years ago, the same argument was found to be without merit. Five decades have lent it no heft. It is still without merit.

**25.** Therefore, the remedies of such tenants or occupants vis-à-vis their tenancies or occupancies lie elsewhere. In any case, it should be evident that continuing in occupation of a ruinous and dangerous building does nothing at all to safeguard those rights. In saying this, we are mindful of the distinction drawn by the Supreme Court in *Vannattankandy Ibrayi v Kunhabdulla Hajee*[4] in the context of the extinguishing of a tenancy. Noticing Section 108(B)(e) of the Transfer of Property Act, 1882, the Supreme Court held that provision, which give the *lessee* the option of voiding the lease in the event the premises are destroyed by natural calamity, would have no application where built premises are fully controlled by a complete rent control legislation. In fact, we find the decision in *Ibrayi* supports our view. In that case, the structure in which the tenanted premises existed (a shop) was destroyed by fire. Claiming that the

---

**4** (2001) 1 SCC 564 : AIR 2003 SC 4453; That Section 108(B)(e) applies to leases of *land* is well settled: *see Raja Dhruv Chand v Raja Harmohinder Singh*, AIR 1968 SC 1024.

tenancy continued even though the premises no longer existed, the erstwhile tenant constructed a new shop on the now-empty land without the landlord's permission. The Supreme Court held that this could not be done. The local rent control legislation fully occupied the field. It was a self-contained code. There was no scope for invoking Section 108(B)(e) of the Transfer of Property Act. The word tenancy could not be held to mean that the tenant would be entitled to squat on open land in expectation of occupying any new structure put up by the landlord. However, it is an entirely different situation *where a landlord himself pulls down a building governed by the State Rent Act*. In our case, resort may be had in such a situation to Section 19, 20 and 21 of the Maharashtra Rent Control Act, 1999. In any case, Section 354(5), quoted above, makes specific provision to save tenancy rights in the case of demolition.

**26.** The Petitioners' argument also entirely overlooks the 28th February 2018 decision of AS Oka J (as he then was) and RI Chagla J in *MCGM v State*, mentioned earlier. That final judgment set out in great detail the various statutory provisions of the MCGM Act as also the corresponding provisions of the Maharashtra Municipal Corporations Act, 1949. We are in entire agreement with the findings returned by the Division Bench on 28th February 2018. The Division Bench referred to the Supreme Court decision in *Makarand Dattatreya Sugavkar v. Municipal Corporation of Greater Mumbai*,[5] and relied on paragraphs 19 and 20 of the Supreme Court decision. We, too, draw support from paragraph 20 of the Supreme Court decision that the Division Bench quoted: the primary object of Section 354 is to protect the public at large and passers-by from

**5** (2013) 9 SCC 136.

the danger posed by buildings in so ruinous a state. It is not the prerogative, but the statutory duty of the Corporation to implement a Section 354 notice in letter and spirit. That duty is in the nature of a public law obligation. In a given case, the Court can compel it. As the Division Bench in *MCGM v State* noted, this element of public duty cast on officials by Section 354 has been repeatedly emphasized by this Court.[6]

**27.** We turn now to some other facets of what has virtually become a 'dilapidated building jurisprudence', at least in this Court.

**28.** First, there is the matter of occupants offering to give an 'undertaking'. We are conscious that this approach has gained much currency, especially in the last few years. It is now more or less routine for lawyers to blithely offer on behalf of their clients an 'undertaking to continue in occupation at their own risk'. Mr Damani says so too. We find this unacceptable on facts. These tenants/occupants, paying paltry or no rent, have so far paid next to nothing towards maintenance of the structure that they occupy. We must notice Section 14 of the Maharashtra Rent Control Act, 1999:

> **14. Landlords' duty to keep premises in good repair.**
>
> (1) Notwithstanding anything contained in any law for the time being in force and in the absence of an agreement to the contrary by the tenant, every landlord shall be bound to keep the premises in good and tenantable repair.

---

**6** *MCGM v State*, paragraphs 18–20, *supra*. *See also*: *Tadeshwar Wadi Co-operative Housing Society Ltd v State of Maharashtra & Ors*, 2013 (2) Mh LJ 681.

(2) **If the landlord neglects to make any repairs, which he is bound to make under sub-section (1), within a reasonable time after a notice of fifteen days is served upon him by post or in any other manner by a tenant or jointly by tenants interested in such repairs, such tenant or tenants may themselves make the same and deduct the expenses of such repairs from the rent or otherwise recover them from the landlord**:

Provided that, where the repairs are jointly made by the tenants the amount to be deducted or recovered with interest by each tenant shall bear the same proportion as the rent payable by him in respect of his premises bears to the total amount of the expenses incurred for such repairs together with simple interest at fifteen per cent per annum on such amount:

Provided further that, the amount so deducted or recoverable in any year shall not exceed one-fourth of the rent payable by the tenant for that year.

(3) For the purposes of calculating the expenses of the repairs made under sub-section (2), the accounts together with the vouchers maintained by the tenants shall be conclusive evidence of such expenditure and shall be binding on the landlord.

(*Emphasis added*)

There is absolutely nothing presented to us to indicate that the Petitioners ever resorted to Section 14(2). It is not as if the building suddenly became so ruinous overnight. The process had to be gradual, spanning decades. In all that time, not one of these occupants or tenants have once cared to take any steps to maintain

the structure. Section 14 of the Rent Act casts a duty on a property owner to maintain the premises in tenantable repair. But it also gives tenants the right to *force* those repairs should the landlord be recalcitrant. These tenants have done nothing. Their own report shows that extensive repairs are, even according to them, necessary. They only say that there is no need to tear down the building. They do not say the building is in such mint condition that it needs no repairs at all. Indeed, our experience is that when tenants are asked to contribute essential repairs, these are resisted and it is only when the building is so completely dilapidated that there is no option but to have it evacuated, pull down and reconstructed that such offers of volunteering to pay for repairs come to be made.

**29.** We do not accept that there is any warrant or support for this 'undertaking jurisprudence'. After all, what is the nature of such an undertaking? What is its value? Typically, the undertaking is worded to say the occupants will continue in occupation at their own risk; that they will not hold anyone liable if there is a calamity; and that they agree to be liable for any losses to life or property of third parties including passers-by. We fail to see the value of such an undertaking. If it is meant or conceived to be in form of some sort of generalized, non-specific indemnity, then it is utterly useless. Should there be a mishap to the person giving the undertaking, perhaps even a loss of life, then that undertaking, no matter what its verbiage and legalese, serves no purpose at all. In that situation, it can never be enforced. To put it pithily, when the 'undertaker' meets his maker, he is beyond the reach of the law. Therefore, in our view, the practice of permitting persons to continue in occupation on the basis of such undertakings has no warrant in law. In fact, it is

contrary to the specific mandate of the law. These "undertakings", in the form noted earlier, may hold none responsible, but does that absolve the public body from the loss caused to a third party (an innocent passer-by or one residing in the neighbourhood), or give the public body complete and total immunity from all legal proceedings or the consequences of any verdict rendered therein? The answer is obviously no. It is extremely doubtful whether it can be urged that an undertaking of this nature described above, even if filed in and accepted by the Court, releases the MMC from the statutory obligation and duty it owes to the public at large.

**30.** To our mind, the principle, succinctly summarised in *York Corporation v Henry Leetham & Sons Ltd*,[7] a decision of the Chancery Court summarised below, fully applies to the present position of the MMC. In the case before the Chancery Division, York Corporation was by statute entrusted with the control and management of the Rivers Ouse and Foss in Yorkshire. It could charge tolls, within limits, as it deemed necessary to carry on the two navigations in which the public had an indubitable interest. In 1888, the corporation entered into two agreements with the firm of Henry Leetham & Sons. These allowed the firm and its successors and assigns to transport cargo on the River Ouse for a monthly fee in place of authorised dues and charges, with an agreement for a refund to the firm of the difference between the annual fee and the ordinary charges. The River Foss agreement was one by which the firm covenanted to pay the corporation £200 per annum for 20 years as a composition for the ordinary tolls, in exchange for free use of that waterway. York Corporation sued for a declaration that the two

---

**7** [1924] 1 Ch 557.

agreements were illegal and invalid being ultra vires. The Chancery Court held for the corporation, saying that:

> no matter what emergency might arise, it had disabled itself from exercising its statutory powers ...

Disposing of the witness action before him, Russell J held that no body charged with statutory powers for public purposes may divest itself of such powers or fetter itself in the use of such powers. He said:

> As I have already indicated, the plaintiffs are invested with statutory powers of charging such tolls, within limits, as they may deem necessary for the purpose of carrying on these two undertakings in which the public are interested. The effect of these two agreements is that they bind themselves for a period, the duration of which depends upon the volition of the defendants, not to exercise those powers as against them. No matter what emergency may arise during the currency of the agreements the Corporation have deprived themselves of the power to charge the defendants such increased tolls as might enable them to cope with the emergency. They have for so long a time as the defendants desire to that extent wiped out or fettered their statutory power. If that be, as I think it is, the effect of these agreements, they are, in my opinion, agreements which are ultra vires the Corporation.

**31.** The second aspect is the trend of making an order directing parties to 'maintain the status quo'. This is effectively what is sought even in this writ petition when the petitioners seek from us a writ commanding the restoration of power and water supply and a restraint against the forced demolition of the structure. In the case

of a building subjected to a Section 354 notice we do not even pretend to understand what, if anything, an order of 'status quo' (whatever the wording) is supposed to mean. Is it that the building should continue to degrade and become more ruinous? Or is that that occupants should continue to be a hazard to themselves or others or both, contrary to the public law mandate of the statute? Or is it supposed to be some final determination that the building is not, in fact, so structurally damaged as to warrant its being pulled down? If so, then that is a final determination — and one that weight of precedent says is clearly impermissible — and cannot constitute an interim or ad interim order.

**32.** We do not suggest that in no case can an order of status quo ever be made. But it is our considered view that an order of status quo can be passed only in circumstances that are so sufficiently precise that both sides and the Court encounter no ambiguity about the state of affairs that are ordered to be retained as-is.[8] The expression 'status quo' means 'the existing state of affairs'; 'the situation that currently exists';[9] or to keep things as they presently are. It is the nominative form of the prepositional Latin phrase, *in statu quo*, literally 'in the state in which'. In the case of a dilapidated building, a generalized order of status quo without reference to a specific or know state of affairs only means that the building should be allowed to continue to deteriorate further, and that persons are allowed to continue to occupy the building that has been found to be

---

**8** In *Kishore Kumar Khaitan & Anr v Praveen Kumar Singh*, (2006) 3 SCC 312, the Supreme Court said it was not proper to order a status quo (there, in respect of premises) without indicating what the status quo was.

**9** Black's Law Dictionary, 7th Edition.

dangerous not only to themselves but to the general public. Such an order of status quo itself poses and carries a risk not only to the occupants themselves but also to others who are not connected with the present litigation at hand. That stripe of generalized, non-specific status quo order in Section 354 cases is contrary to law, to statute, to precedent, and even logic: there can be no status quo preventing the monsoon, for instance, or any other force of nature, nor will it operate to prevent continuing structural degradation over time. Such a non-specific order of status quo is therefore entirely impermissible. If necessary, a court will decide the case finally there and then at the stage of admission (as we have this one).

**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. We do not suggest that the mere age of a structure invariably and unquestionably means that it is 'ruinous' or dilapidated. By that reasoning, the High Court building, which is 150 years old, or other heritage structures such as CST railway station or the Mumbai University's Fort campus would all be deemed to be in imminent danger of collapse. They are not. But even these buildings, like all built structures, require periodic and timely intervention for their preservation and upkeep. There are several buildings in the Island City that have been well-maintained for decades, or have been restored and do not pose a danger. Should

any of these buildings, in demonstrably good condition, be subjected to such a demolition notice, a Court will have no hesitation in concluding that the decision is perverse. But that perversity has to be shown. It is not to be assumed. Therefore, when there is material available to show deterioration, and the lack of timely and periodic maintenance and repairs over time, the writ Court will be slow to interfere without clear demonstration and proof of mala fides, arbitrariness and perversity.

**34.** It follows therefore that without a clear and specific prima facie finding that the TAC order or a take-down notice are vitiated for the reasons we have mentioned earlier (arbitrariness, perversity, or mala fides), no pro tem order of status quo is ever legitimate or permissible. Consequently, it is our considered view that there is no scope whatsoever in the context of a dilapidated building subjected to a Section 354 notice for passing or continuing any such order of status quo (whether or not subject to any undertaking).

**35.** Lastly, we reiterate that it is not in every case that the intervention of the Court can be sought. Unless a Petition makes out sufficient cause for interference on one or more of the grounds that we have indicated earlier in this order, in our view a High Court is not entitled to intervene in exercise of its limited jurisdiction under Article 226 of the Constitution of India. To put it differently, in exercise of this limited jurisdiction the High Court cannot substitute its view for the technical view of the members of the TAC. It is only where that TAC is clearly demonstrated to have acted arbitrarily, mala fide, or in a manner that is can fairly said to be perverse i.e. by

passing an order that is implausible or one that no reasonable or rational person could ever take, that this Court will intervene.

**36.** This is also, incidentally, not a question of deciding whether the TAC is a purely administrative body (it is) or a quasi-judicial one (it is not), for in going about its business, the TAC never determines any of the legally enforceable rights of any tenant or occupant. Those are fully protected in law. There is, therefore, also no necessity of entering into any larger controversy regarding the powers of the TAC, whether these are administrative or quasi-judicial, or for a more detailed scrutiny of the law on this aspect from *AK Kraipak v Union of India*[10] onwards. As we have noted, the TAC was brought into being as a transitory measure absent a policy at that time, to allay fears and ensure greater transparency and accountability, as an inbuilt balance on factual and technical matters.

**37.** We note that in paragraphs 2 to 5 of its 28th February 2018 judgment in *MCGM v State*, citing the Supreme Court decision in *Census Commissioner v R Krishnamurthy*,[11] the Division Bench disapproved of the previous attempt at judicial legislation by the 23rd June 2014 order. We are in entire agreement with those observations made on 28th February 2018. As the Division Bench said on 28th February 2018, no one has ever challenged that policy. It is also clear that no so-called 'policy' (which is, in fact, nothing but a set of guidelines) can over-ride the statute under which it is framed. Having regard to the settled law, therefore, these guidelines cannot confer a right, let alone a legally enforceable right, beyond

**10** (1969) 2 SCC 262.

**11** (2015) 2 SCC 796.

the provisions of the parent statute. These guidelines are, at the highest, an administrative smoothening for greater efficiency, transparency and to provide a fail-safe, and nothing more. They are meant to ensure that the statutory power is not exercised arbitrarily, i.e. that the demolition order is not contrived without sufficient basis.

**38.** As to Mr Damani's submission that there is no risk to any others because there is no one who passes by this building, we find that to be wholly irrelevant. This submission assumes that there will never be any development or construction in the proximity or vicinity of this chawl in future as well. This assumption is simply too risky to accept, particularly in a city like Mumbai. In any case, the MCGM as a planning authority must have regard not only to third parties but also to the occupants themselves.

**39.** It is in these circumstances that we are not unable to find any merit whatsoever in this writ petition. It is rejected. There will be order as to costs.

**(S.C. DHARMADHIKARI, J)**

**(G. S. PATEL, J)**