

Vacate 'dangerous' Kurla building within one week, HC tells tenants

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Mumbai: The Bombay high court has directed about 70 tenants of a dilapidated and 'very dangerous' building in Kurla (west) to vacate the premises within a week.

The HC rejected the appeal of Chakkiwalla building tenants that provisions under the Municipal Act and the Disaster Management Act mandate that alternative accommodation be given to inhabitants of 'dangerous' buildings, even privately owned, before eviction for demolition. A provision under section 30(2)(ii) of the Disaster Management Act to identify vulnerable areas and take steps to prevent and mitigate disasters cannot be interpreted to mean that the BMC is obliged to do so, Justi-



Chakkiwalla building in Kurla (W)

ce Girish Kulkarni held.

The tenants had challenged a lower court order that had refused to restrain BMC from implementing a 2017 eviction notice after a technical advisory committee report tagged the building C-1 category—very dangerous and needs to be vacated immediately. A fresh report was ordered last July. In May,

“ If pvt landlords or...tenants do not maintain building... and... BMC initiates demolition...for the court to hold that it [BMC] ...should provide temporary alternative accommodation...is neither a mandate of the MMC Act nor an obligation even of landlord

Justice Girish Kulkarni | HC

structural engineers again stated that the 40-year-old building would crash “without any warning”.

Advocate VV Shukla, for the tenants' proposed society, argued that the Municipal Act mandates alternative interim accommodation to inhabitants of even private buildings before demolition. Such an argument is “unte-

nable”, said civic lawyer Vinod Mahadik. The HC agreed and directed the BMC to act on the July 25 notice for eviction and demolition of the building.

Shukla sought two weeks for tenants to vacate. But the HC observed that many had already left, and about 50 remained. The judge gave them a week to vacate, but clarified that their occupation till then would be at “their own risk”. It added that in case of any untoward incident, the tenants can't blame BMC or any other authority, and they would be held liable if damage is caused to occupants of adjoining buildings or pedestrians.

The HC also rejected the argument that a full bench order of March 26 had barred any eviction during the Covid-19 pandemic.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LD/VC/AS/SJ/AO NO.19 OF 2020

WITH

LD/VC/AS/SJ/IA NO.1 OF 2020

Aakash Co-operative Housing Society (Proposed)
and Ors.

...Appellants

vs.

Municipal Corporation of Gr.Mumbai & Ors.

....Respondents

Mr.V.V.Shukla, for the Appellants/Applicants.

Mr.Vinod Mahadik, for the Respondent Corporation-MCGM.

CORAM : G.S.KULKARNI, J.

DATE : 5 August 2020
(through Video Conferencing)**:ORAL JUDGMENT:**

1. Heard Mr.Shukla, learned Counsel for the appellants and Mr.Mahadik, learned Counsel for the Municipal Corporation.

2. This is an appeal under Order 43 Rule 1 of the Civil Procedure Code whereby the appellants who are tenants of an old dilapidated building ('suit buildings') have approached this Court being aggrieved by rejection of their notice of motion in a suit filed by them before the Civil Civil Court at Bombay. By the impugned order the learned trial Judge rejecting the appellants' notice of motion has refused to grant any protection to the eviction of the appellants from the suit buildings, paving way for the Municipal Corporation to get these

dangerous suit buildings vacated and take further appropriate action to demolish the said building.

3. There is some history of litigation. The Municipal Corporation on 6 October 2017 had issued a notice under Section 354 of the Mumbai Municipal Corporation Act for removal of the building in question on the basis of a TAC report categorizing the building as dangerous and classifying it under the “C-1” category. The appellants being so aggrieved had approached the City Civil Court in a Suit no.0101257 of 2018 (first suit). A notice of motion came to be moved by the appellants, in the said suit seeking interim reliefs inter alia of a temporary injunction from being evicted. This notice of motion was rejected by the learned trial Judge. Against said rejection, the appellants had approached this Court in Appeal from Order no.529 of 2019, which came to be disposed of by an order dated 25 July 2019 directing, that an opportunity be granted to the appellants of a hearing to be granted to their structural engineer by the TAC and a fresh decision be taken by TAC. In pursuance of the said orders passed by this Court, the TAC following the necessary procedure and after affording a full-fledged opportunity to the consultant of the appellants, has taken a fresh decision as contained in the TAC Report dated 26 May 2020, recording the following conclusion:-

“Conclusion:-

On perusal of all the structural audit reports, considerable unauthorized work carried out on site, statements made by all Structural Auditors during hearing, T.A.C. **has unanimously come to the conclusion that both the wings (A & B) of structure known as Chakkiwala Building situated at New Hall Road, Kurla West, Mumbai-400070 in L ward is structurally deteriorated and is in dilapidated condition. The building may collapse without giving any warning thereby endangering life & property of occupants of the building and also the occupants of the adjoining properties and passers thereby. In view of the above it is unanimously declared that the above cited structure falls under C-1 category. Under the circumstances, the**

structure under reference needs to be vacated and demolished immediately.

L ward office shall therefore take necessary action as per the policy guidelines issued in this regard.”

(emphasis added)

4. The appellants being aggrieved by the consequences which follow this TAC report, that now the Municipal Corporation would take steps to evict the appellants and demolish the suit building, under fresh notices dated 3rd June 2020 and 3rd July 2020 again filed a fresh suit (the suit in question) L.C.Suit (St) no.3889 of 2020 (second suit). The suit is basically for the same cause of action which had arisen in the earlier suit. As to how a second suit was maintainable is another matter. Be it so, in this suit a notice of motion in question was filed interalia seeking the following reliefs:-

“A. Pending the hearing and final disposal of the suit, this Hon’ble Court be pleased to direct the landlords/MCGM/State Government to forthwith provide alternate temporary transit arrangement for the tenants/occupants (Plaintiffs) and to frame redevelopment scheme under Reg.No.33(7A) of DCPR-2034 or to acquire the suit property in favour of the Plaintiffs as the case may be and permitting the tenants/plaintiffs to make ‘propping’ arrangement under the supervisions of the Structural Engineer in the suit building and to allow the Plaintiffs/tenants to reside at their own cost, consequences and risk till the alternate transit accommodation is allotted to the Plaintiffs in accordance with the law.

B. Pending the hearing and final disposal of this suit, this Hon’ble Court be pleased to stay the effect, implementation and operation of the impugned notice dated 03.06.2020 and subsequent impugned notice dated 03rd July 2020 and eviction of the Plaintiffs/tenants from their suit premises by the MCGM / State Government in all manners.

C. Ad-interim, interim reliefs in terms of prayer clauses (A) and (B) hereinabove may be granted in favour of the Plaintiffs and against the Defendants.

D. Cost of the suit be provided for;

E. And for such further orders as the justice and convenience may demand on time to time be passed in favour of the Plaintiffs and against the Defendants.”

5. By the impugned order which is a detailed order, the learned Trial Judge has rejected the appellants notice of motion.

6. Mr.Shukla, learned Counsel for the appellants in assailing the impugned order has limited submissions. He submits that the first prayer of the appellants in the notice of motion was for a direction to the municipal corporation to provide alternate temporary transit arrangement, failing which the implementation of the subsequent notice dated 25 July 2020 calling upon the appellants to vacate, ought to be stayed. He would submit that it was an obligation on the part of the Municipal Corporation to provide for an alternate accommodation to the appellants and without providing such alternate accommodation action to evict the appellants cannot be taken. In support of this submission, he has referred to the provisions of Section 354C read with Section 6(t) of the Mumbai Municipal Corporation Act, 1988. According to him, Section 354C mandates the municipal corporation to frame an improvement scheme for the benefit of the persons who are inhabitants of a dilapidated building, like the suit building. It is submitted that the municipal corporation has not framed any such scheme. He submits that also a representation to that effect is made by the appellants on 10 July 2019 and the same has not been decided so far.

7. Mr.Shukla would next submit that his clients do not dispute that the building is in a dilapidated and dangerous condition. He submits that his clients also do not dispute that the TAC report would also record the suit building as extremely dangerous and of a nature which is likely to fall

without any warning, endangering the life and property of the occupants of the building and the occupants of the adjoining property. Mr. Shukla would however submit that despite this clear observation, his clients would not be asked to vacate the building as the municipal corporation has failed to provide alternate accommodation. He would submit that his clients are ready to immediately vacate the building and for that matter even tomorrow, provided an alternate accommodation is granted to them by the municipal corporation.

8. Mr. Shukla would next submit that his clients are also entitled to the benefits of Section 30(2)(iii) of the Disaster Management Act, 2005 which provides for an obligation on the district authority to ensure that the areas in the district, vulnerable to disasters are identified and measures for the prevention of disaster and the mitigation of its effects are undertaken by the departments of the Government at the district level as well as by the local authorities. He submits that in fact all these issues have been completely overlooked by the learned trial Judge in passing the impugned order.

9. Mr. Shukla, would next submit that his clients are also entitled to the benefit of the order dated 26th March, 2020 passed by the Full Bench of this Court inasmuch as the orders of eviction and demolition cannot be implemented by the Municipal Corporation during the present Pandemic caused due to COVID-19. He submits that the said order of the Full Bench has been continued by this Court from time to time and continuous to operate even today.

10. On the other hand Mr. Mahadik, learned Counsel for the Municipal Corporation would submit that there is no dispute as seen from the TAC

report that the suit buildings are in extremely dangerous condition. He would submit that most of the appellants have vacated and there are only about 5 to 10 appellants in the 'A' and 'B' Wing of the building. This statement of Mr.Mahadik is however disputed by Mr.Shukla, learned Counsel for the appellants. Mr.Mahadik would submit that the contention as urged by Mr.Shukla that there is an obligation on the Corporation to provide a temporary accommodation, is totally misconceived. He would submit that there is no obligation on the Municipal Corporation under the Mumbai Municipal Corporation Act mandating the Municipal Corporation to provide alternate accommodation to the respondents of a private building. He therefore submits that in the absence of any legal right the Municipal Corporation is not under any obligation to provide for any alternate accommodation to the appellants.

11. Mr.Mahadik would next submit that the suit buildings poses a great danger to life and property. He submits that there is an adjoining running school and in case of an untoward incident of a collapse, large scale damage would occur to both life and property including qua those in the adjoining structures. Mr.Mahadik would submit that the electricity and water connection of the suit buildings were disconnected on 22 July 2020 and due to pendency of the suit proceedings, further action of eviction and demolition could not be taken by the municipal corporation. He would submit that immediately after the impugned order came to be passed, a notice was issued to the appellants to vacate the building, failing which the Municipal Corporation would be required to follow necessary procedure to evict the appellants and take further necessary action. Mr.Mahadik would submit that the appellants are well conversant and conscious of the condition of the building since last three years, however, taking recourse to litigation, the

demolition of this building has been prolonged.

12. Mr.Mahadik would submit that Mr.Shukla's contention relying on Section 354-C of the Mumbai Municipal Corporation Act, is untenable. In regard to Mr.Shukla's reliance on the orders passed by the Full Bench of this Court dated 26 March 2020, to contend that Municipal Corporation cannot take any action of demolition, it is submitted that in the present circumstances the said order would not be applicable as this is a case of extreme emergency and if the suit buildings are not demolished they are likely to cause serious peril to human life and property. According to Mr.Mahadik the order of the Full Bench cannot be relied upon by the appellant to prevent their eviction and demolition of the suit buildings in the present circumstances. Mr.Mahadik would submit accordingly that the appeal be dismissed.

13. Having heard Mr.Shukla, learned Counsel for the appellants and Mr.Mahadik, learned Counsel for the Municipal Corporation, I am not persuaded to accept the contentions of Mr.Shukla for the reasons I discuss.

14. Admittedly the suit buildings are in a dilapidated condition hence a notice under Section 354 of the Mumbai Municipal Corporation Act was issued to the occupants of the building/appellants, as far back as on 6 October 2017. There was an earlier TAC report recognizing and classifying the suit buildings in the 'C-1' category namely buildings in extremely dangerous condition. It is also not in dispute that there is an adjoining school and there are other adjoining properties. According to the fresh TAC report dated 26 May 2020, the suit buildings are stated to be structurally so deteriorated and dilapidated that they may collapse without any warning as

observed by the TAC. These observations as contained in TAC report are not disputed by Mr.Shukla and fairly so. Once it is an admitted position that the building has posed an immediate danger to human life and property, the lives of the occupants of the building and their safety is also one of the basic consideration apart from the lives and safety of the others who are likely to be affected in case of an untoward incident of a collapse. It also cannot be overlooked that the appellants at all material times right from issuance of the first notice in the year 2017 are fully aware about the condition of these buildings. They had earlier filed a suit on the same cause of action assailing the action on the part of the municipal corporation to evict the appellants which is stated to be still pending. In pursuance of an order passed by this Court in the proceedings of that suit, a fresh TAC report is now available and which does not change any of the circumstances as set out in the earlier TAC report. The municipal corporation in these circumstances, in my opinion, would be correct in pursuing the notice issued by it under Section 354 and by issuing a fresh notice calling upon the appellants to vacate the said building in the interest of their own safety and the safety of the others.

15. Mr.Shukla's contention referring to Section 354-C of the Mumbai Municipal Corporation Act,1888 namely a legal right in favour of the appellants for a temporary alternate accommodation to be provided by the Municipal Corporation as a condition precedent before the appellants are evicted from the suit building, in the present circumstances, in my opinion, is not well founded. It is necessary to note this provision which reads thus:-

“354C. Commissioner to make a draft improvement scheme- (1) [If it shall appear to the Commissioner-

(A) that within certain limits in any part of [Brihan Mumbai]]

(a) and buildings used, or intended or likely to be used, for human habitation, are unfit for human habitation, or

(b) the narrowness, closeness and bad arrangement or the bad condition of the streets and buildings, or groups of buildings, within such limits or the want of light, air, ventilation or proper conveniences, or any other sanitary defects, or one or more of such causes, are dangerous or injurious to the health of the inhabitants either of the buildings within the area of such limits, or of the neighbouring buildings; and that the evils connected with such buildings and the sanitary defects in such area cannot be effectually remedied otherwise than by an improvement scheme for the rearrangement and reconstruction of the streets and buildings within such area or of some of such streets or buildings, or

(c) it is necessary to provide for the construction of buildings for the accommodation of the poorer [* *] classes, [or,

(B) that for the purpose of providing building sites for the expansion of [Brihan Mumbai], or of remedying the defective ventilation of any part of [Brihan Mumbai], or of creating new or increasing the existing means of communication and facilities for traffic between various parts of [Brihan Mumbai] it is expedient to form new or to alter existing streets in any part of [Brihan Mumbai]] the Commissioner may

(i) with the previous approval of the corporation, which shall not be given unless the corporation are satisfied of the sufficiency of their resources, draw up a notification stating that the Commissioner proposes to make an improvement scheme, the area to which the resolution relates and naming a place where a map of the area may be seen at all reasonable hours;

(ii) during three consecutive weeks publish simultaneously in the [Official Gazette] and in some one or more English and in some two or more vernacular newspapers circulating within [Brihan Mumbai] a copy of the said notification;

(iii) proceed to make a draft improvement scheme and submit the scheme to [the Improvement Committee] for approval.

(2) In making an improvement scheme more than one area may be included in one improvement scheme.

(3) With the previous approval of the corporation the Commissioner may, for the purpose of making an improvement scheme, cause surveys to be made in areas either inside or outside the limits of the area comprised in the scheme to be made.”

(emphasis added)

On a plain reading of Section 354-C, it is quite apparent that this provision relates of to an improvement scheme. It is a provision under which the Commissioner of the Municipal Corporation may frame a draft improvement scheme in the manner as set out including for the benefit of buildings used, or intended or likely to be used, for human habitation, are unfit for human habitation. Section 354-C(1) when uses the word “ *if it shall appear to the Commissioner*” and further in sub-section (B) uses the word “*may*” it clearly indicates that the provision is directory. It confers a discretion on the municipal commissioner to make a draft improvement scheme as provided. Section 354-C of the Mumbai Municipal Corporation Act *ipso facto* cannot be read to mean that there is an existing and an absolute obligation on the Municipal Corporation to first provide a temporary alternate accommodation to the occupants of a dilapidated building before they are evicted and that too in the absence of any scheme framed thereunder. Thus the contention of Mr.Shukla taking recourse to Section 354-C cannot be accepted.

16. The wide canvass of Mr.Shukla’s submission that even if a building belonging to a private landlord is in a ruinous condition the Municipal Corporation would be under a legal obligation to provide an alternate accommodation to the occupants of the said building, in my opinion, is too far-fetched to say the least. If the private landlords or the old tenants do not maintain the building leading to a consequence of the building becoming ruinous endangering life and property, and when in such a situation the municipal corporation steps-in to initiate an action of demolition to save human lives and property, for the Court to hold that Municipal Corporation at public cost should provide a temporary alternate accommodation to the occupants, at least presently is neither the mandate and Scheme of the MMC Act nor for that matter an obligation even of the private landlord.

17. Mr.Shukla's contention relying on the orders of the Full Bench of this Court dated 26 March 2020 to contend that the appellants can not be evicted from the suit buildings during the pandemic situation, in my opinion, is not well founded in the present facts and circumstances. The orders of the Full Bench in paragraph (8) and (9) records as under:-

“8. In this situation, we find it appropriate to continue all interim orders which are operating till today and are not already continued by some other courts/authority including this court and the same shall remain in force till 30.04.2020, subject to liberty to parties to move for vacation of interim orders only in extreme urgent cases. Thus, all interim orders passed by this High Court at Mumbai, Aurangabad, Nagpur and Panaji as also all courts/Tribunal and authorities subordinate over which it has power of superintendence expiring before 30.04.2020, shall continue to operate till then. It is clarified that such interim orders which are not granted for limited duration and therefore, are to operate till further orders, shall remain unaffected by this order.

“9. Orders or decree for eviction, dispossession, demolition already passed by any court/Tribunal/Authority shall also remain in abeyance till then.”

(emphasis added)

18. No doubt the directions in paragraph 9 record that orders of an authority in regard to eviction, dispossession, demolition already passed shall remain in abeyance. However, on a cumulative reading of paragraph 8 and 9 of the orders passed by the Full Bench in a situation as in the present case, in my opinion, the generality of these directions would not be of any assistance to the appellants. The orders of the Full Bench in my opinion cannot be interpreted to mean that it would prevent the Municipal Corporation from

exercising its statutory powers of eviction and demolition in regard to a building which is in a highly ruinous condition and which at any moment is likely to collapse without any prior warning endangering human life and property. If the reading and interpretation of the orders of the Full Bench as suggested on behalf of the appellants is accepted it would lead to a serious consequence affecting human life and property not only affecting the appellants but the occupants of the adjoining buildings, innocent pedestrians etc. Mr.Shukla's submissions in this regard are required to be rejected.

19. On a perusal of the impugned order, it can be seen that the learned trial Judge has taken into consideration all the facets of the appellants case and most importantly the fact that even on the appellant's contention the building is not fit for human habitation and would be required to be pulled down. Mr.Mahadik would be correct in his contention that the Corporation is now required to follow the procedure and demolish the building, not only in the interest and safety of the appellants but also in the safety of the others who are likely to be affected and all the adjoining properties. Mr.Mahadik would also be correct in his contention that being a private building and the appellants at all material times being well aware of the state of the building and at least since last three years, ought to have made alternate arrangement. In any event, the appellants are tenants of the building, their tenancy rights would always remain protected in the event of a demolition by the municipal corporation (see decision of the Division Bench of this Court in MCGM Vs. State of Maharashtra in W.P(L)11135 of 2014 dated 23 June 2014).

20. Mr.Shukla's contention referring to provisions of Section 30(2)(iii) of the Disaster Management Act 2005 also would not assist the appellants. Section 30(1) and sub-section 2(iii) reads thus:

30. Powers and functions of District Authority-

(1) The District Authority shall act as the district planning, coordinating and implementing body for disaster management and take all measures for the purposes of disaster management in the district in accordance with the guidelines laid down by the National Authority and the State Authority.

(2) Without prejudice to the generality of the provisions of subsection(1), the District Authority may-

(i) prepare a disaster management plan including district response plan for the district;

(ii) coordinate and monitor the implementation of the National Policy, State Policy, National Plan, State Plan and District Plan;

(iii) ensure that the areas in the district vulnerable to disasters are identified and measures for the prevention of disasters and the mitigation of its effects are undertaken by the departments of the Government at the district level as well as by the local authorities.

(emphasis added)

The above provision cannot be interpreted to mean that it imposes any obligation on the municipal corporation to provide any alternate accommodation to the inhabitants of a dilapidated building that too privately owned. This provision speaks of measures to be taken for identification of areas vulnerable to disaster and take steps for prevention of a disaster and its mitigation by the concerned authorities. To read into this provision, obligation for allotment of temporary alternate accommodation by the municipal corporation, to the occupants of privately owned dilapidated building would amount to mis-reading of the provision.

21. As a result of the above discussion, in my opinion, there is no merit in this appeal. It is accordingly rejected. The Municipal Corporation shall take immediate steps to follow the procedure and to pursue the fresh notice as issued by it on 25 July 2020. The appellants are also directed to immediately vacate the premises.

22. At this stage Mr.Shukla states that two weeks time be granted to the appellants to vacate the premises. In my opinion, this may not be in the interest of the occupants and more particularly considering that many of the occupants have already vacated. Be that as it may, within one week from today, the occupants shall fully vacate their respective premises. However, in the meanwhile their occupation of the premises shall be at their own risk cost and consequences, and in the event of any untoward incident of a collapse, the appellants shall not blame either the municipal corporation or any other authority. They are also put to notice that if any damage is caused to the occupants of the adjoining properties or any innocent pedestrians, they shall be collectively and personally liable for any such damage to human life and property.

23. Mr.Shukla at this stage submits that the municipal corporation should be directed to decide the appellants representation as made to the municipal corporation for an improvement scheme to be framed and benefit of the scheme to be given to the appellant under Section 354-C. The Municipal Corporation shall decide the said representation of the appellants as expeditiously as possible. However, it is made clear that the decision on the representation is of no relevance with the orders directing the appellants to vacate their respective premises.

24. Appeal is accordingly disposed of in the above terms. No costs.

25. Interim application would also not survive, it is accordingly disposed of.

26. This order will be digitally signed by the Private Secretary of this Court. All concerned to act on digitally signed copy of this order.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****LD/VC/AS/SJ/AO NO.19 OF 2020****WITH****LD/VC/AS/SJ/IA NO.1 OF 2020**

Aakash Co-operative Housing Society (Proposed)

and Ors.

...Appellants

vs.

Municipal Corporation of Gr.Mumbai & Ors.

....Respondents

ORAL JUDGMENT :

Date of Decision: 5th August, 2020

FOR APPROVAL :

THE HON'BLE SHRI.JUSTICE G.S.KULKARNI : Sd/-

1. To be referred to the Reporter or not? Yes.

2. To be shown to the Reporter of the local newspapers or not ? Yes.
