

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION (L) NO. 7846 OF 2020**

Ashok Kumar Joshi and others ... Petitioners

Versus

State of Maharashtra and others ... Respondents

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Mr. Akshay Kapadia for the Petitioners.

Mr. Shyamrao Gore, AGP for the State.

Ms. Rupali Adhate alongwith Ms. Pallavi Thakar for the MCGM.

Mr. Mayur Khandeparkar instructed by Mr. Maulik Tanna and Ms. Henna Shah for Respondent Nos. 5 to 8.

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CORAM : S.J. KATHAWALLA AND

RIYAZ I. CHAGLA, JJ.

DATED : DECEMBER 15, 2020.

P.C. :-

1. Paragraph 1 of the Order dated 9th December, 2020 shall read as under :

"1. We are informed that Petitioner No.5 is still in occupation of the subject structure. Petitioner No.5 shall continue to occupy the same at his own risk."

2. The Order dated 9th December, 2020 now reads as follows :

"1. We are informed that Petitioner No.5 is still in occupation of the subject structure. Petitioner No.5 shall continue to occupy the same at his own risk.

2. The Learned Advocate appearing for the Petitioners on instructions states that an independent Architect be appointed to visit and inspect the subject building, whose decision shall be binding on the Petitioners. In view thereof, we pass the following order :

- i. M/s. Shetgiri and Associates are appointed as independent Architects who along with the Chartered Structural Engineer shall inspect the subject building on 10th December, 2020 at 03.00 p.m. and after carrying out the necessary tests, if any, submit their report to this Court qua the structural stability of the subject building on 15th December, 2020 at 11.00 a.m.*
 - ii. The learned Advocate appearing for the Petitioners shall hand over a photocopy of the TAC Report to M/s. Shetgiri and Associates.*
 - iii. The Petitioners through their Advocate undertake that the report of the independent Architect and Structural Engineer shall be binding on them. The undertaking is accepted.*
 - iv. The costs / charges of M/s. Shetgiri and Associates shall be borne by the Petitioners.*
- 5. Stand over to 15th December, 2020, FOB."*

3. Pursuant to the above Order, the independent Architect alongwith the Chartered Structural Engineer have submitted their report to this Court stating that the subject building is in a dilapidated condition and falls under C-1 category i.e. which needs to be evacuated and then demolished. In view thereof, the question of quashing or setting aside the Notice dated 10th November, 2020 issued under Section 354 of the Mumbai Municipal Corporation Act, 1888 (**the Act**) as prayed for by the Petitioners, does not arise.

4. The statement made by the Respondent No.5-Trust (Landlord) through their Counsel that they have no objection if all the tenants come forward and reconstruct the building at their expense under Regulation 33(6) of the Development Control

Regulations and agree that as and when the entire lay out goes for redevelopment they (the tenants) shall cooperate with the Respondent No.5-Trust, is accepted.

5. The tenants may therefore proceed to reconstruct the building on the conditions put forth by the Respondent No. 5 - Trust, which are set out hereinabove. Since the costs of reconstruction will be adjusted by the tenants against the rent payable to the landlord, the property tax qua the subject structure shall be paid by the tenants and the property tax qua the land shall be paid by the Landlord.

6. It is clarified that if the entire lay out goes for redevelopment, the tenants shall co-operate with the Respondent No. 5 - Trust (Landlord). Needless to add that the tenants will be entitled to all the redevelopment benefits available in law. Learned Advocate appearing for the Petitioners undertakes on instructions to vacate the subject building within a period of two weeks from today. The undertaking is accepted.

7. The above Writ Petition is accordingly disposed off.

(RIYAZI. CHAGLA, J.)

(S.J. KATHAWALLA, J.)