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MUNICIPAL CORPORATION OF GREATER...

V/S

7, M.M.R.D.A ON 23 JUNE 2014

Bombay High Court

Municipal Corporation of Greater ... vs.7, M.M.R.D.A on 23rd
June, 2014

Bench: Anoop V. Mohta, A.A. Sayed

WP U135-14-24.6.2014.sxw

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 1135 OF 2014**

Municipal Corporation of Greater Mumbai, Through the
Municipal Commissioner, having its office at Mahapalika
Marg, CST, Mumbai-400 001..... Petitioner

Versus

1. State of Maharashtra

Mantralaya, Mumbai-400 032

2. Commissioner of Police, having his address at Crawford
Market, Mumbai.

2 A) Deputy Commissioner of Police, (Zone-9), having address
at Hill Road, Bandra (West), Mumbai-400 050.

2 B) Assistant Commissioner of Police, having address at Off
D.N. Nagar, Above D.N. Nagar Police Station, Link Road,
Andheri (West), Mumbai-400 052.

3. Senior Police Inspector, Oshiwara Police Station, Mumbai.

4. Sardar Baldevsingh Sohansingh

Occupation- Not Known, Age- Adult, having his address at Sohansingh Mansion, Behind H.P. Petrol Pump, S.V. Road, Jogeshwari (W), Mumbai

5. Satish Raghunath Patil

Occupation- Not Known, Age - Adult, having his address at Sarah Corporation, Shop No. 2 & 3, Bldg. No.1, Apna Ghar CHS, N.S. Phadke Marg, Near Telli Galli Signal, Andheri (E), Mumbai - 400 069.

6. Mrs. K. Leela Sadanand,

Occupation- Not known, Age Adult, residing at Room No. 67, 1st Floor, Sohansingh Mansion, Behind H.P. Petrol Pump, S.V. Road, Jogeshwari (W), Mumbai - 400 102.

7. M.M.R.D.A

Having its address at Bandra Kurla Complex, Bandra (E), Mumbai -400 051. .. Respondents

Mr. E.P. Bharucha, Senior Counsel with Mr. S.U. Kamdar, Senior Counsel with Mr. A.Y. Sakhare, Senior Counsel with Ms. Komal Punjabi with Ms. Trupti Puranik with Ms. Shobha Ajitkumar i/by Mr. J.J. Xavier for the Petitioner - BMC.

Mr. D.G. Khambata, Advocate General, with Ms. Uma Palsuledesai, AGP for Respondent Nos. 1 to 3.

Ms. Kiran Bhagalia for Respondent No.7

Mr. K.K. Malpathak for Respondent No.6

Mr. V.P. Sawant for MHADA

Mr. Sardar Baldevsingh Sohansingh Respondent No. 4 present in person.

Mr. Satish Raghunath Patil, Respondent No.5 present in person

CORAM: ANOOP V. MOHTA AND

A.A. SAYED, JJ,

DATE: 23 JUNE 2014.

P.C.:

This matter was listed from time to time. We have heard all the Counsel including the Counsel in other matters which were listed along with this matter for their respective suggestions. We have also heard the learned Advocate General and Counsel for MHADA.

2. This Petition has been filed by Municipal Corporation of Greater Mumbai seeking prayers against the State of Maharashtra and concerned police personnel to take steps for forcible eviction of the occupants of the building known as "Sohansingh Mansion" as also other buildings which are declared to be dilapidated and dangerous by the Corporation and to issue appropriate guidelines for removal of non-cooperating occupants of dilapidated and dangerous buildings. According to the Corporation, these guidelines are necessary so as to avoid any untoward incidents of loss of lives of the occupants of the said buildings as well as, occupants of the adjoining structures and passers-by.

3. Sometimes owners/builders are non-cooperative and fail to take care of their obligations. Sometimes tenants/occupants do not co-operate. Mere initiation of civil and/or criminal proceedings for the same is also of no use or effective mechanism to evacuate or evict immediately the non-cooperative tenants/occupants/owners. In view of the urgency expressed, we are inclined to pass the following order based upon the Draft of Minutes of Order prepared and submitted by the Senior Counsel for the Petitioner-Corporation and approved by the State Government and MHADA. A copy of the Draft of Minutes of Order is taken on record and marked "X" for identification.

4. In light of the problem faced by the Corporation concerning large number of seriously dangerous and dilapidated

buildings/structures which require to be urgently vacated/demolished so as to prevent loss of life of the persons residing therein and/or residing in surrounding localities and/or people who are passers-by, the Corporation has issued notices under Section 354 of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as "the said Act") requiring the occupiers/owners to vacate/pull down the building(s). In view of the fact that in many of such buildings, the tenants and/or occupiers are residing and/or unwilling to vacate the premises inspite of the fact that the building is dilapidated and dangerous and likely to fall, which would cause loss of human life including of the persons who are refusing to vacate there-from and/or because of the inaction on the part of the owners, it has become necessary to pass the present order.

5. On one hand, a number of petitions are filed and moved by the landlord/owner of such buildings seeking direction that the Corporation must enforce the notices issued by them under Section 354 of the said Act and evacuate/remove the occupiers and demolish the dangerous and dilapidated building(s) after evicting unwilling tenants/occupiers AND on the other hand, a number of petitions are filed by the occupiers and/or tenants of such dangerous and dilapidated buildings seeking to challenge the said notices issued under Section 354 of the said Act.

6. Section 354 of the said Act reads as under-
"Dangerous Structures, Removal of Structures etc. which are in ruins or likely to fall" –

(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 conditions 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 neighborhood 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 and to prevent all cause of danger there-from.

(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 passersby and other persons, with a convenient platform and handrail, 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."

7. The Hon'ble Supreme Court in the matter of Makarand Dattatreya Sugavkar Vs. Municipal Corporation of Greater Mumbai 1 in paragraph 20 has observed that:

"The primary object underlying Section 354 is to safeguard the public from the danger of being forced to live in a structure which includes any building, wall or other structure and which is in a ruinous condition or is likely to fall or is in any way dangerous to any person occupying the same. This Section is also intended to protect those who may pass by such structure. A reading of the plain language of Section 489 gives an impression that it is only an enabling provision but if the same is read keeping in view the purpose of its enactment and the setting in which it is placed, it becomes clear that the Commissioner is duty bound to ensure that the written notice given to the owner or occupier under Section 354(1) is implemented in its 1 (2013) 9 SCC 136 in letter and spirit. The duty cast upon the Commissioner is in the nature of a public law obligation and in appropriate case, the Court can issue direction for its enforcement."

8. According to the Municipal Corporation of Greater Mumbai in view of the difficulties faced by them in implementation of such notices under Section 354 of the said Act in the absence of any specific provisions in the said Act for

removal/evacuation of occupants of dilapidated buildings and to make it effective and workable considering the human problems, it is necessary to issue certain guidelines. It is the case of the Corporation that there is no proper response from the police and the Corporation officers are not in a position to enforce the notices under Section 354 of the said Act.

9. Accordingly, for the present, in the absence of any policy in that behalf, the following guidelines are issued:-

a) The present order will be applicable only in respect of those buildings which are highly dilapidated and dangerous and/or classified in Category C-1 by the Corporation whether owned by a private party or by the Corporation or any other authority and in respect of which building, either a notice under Section 354 has been issued or the Corporation has issued a Letter of Evacuation to their tenants and/or occupiers of the buildings.

b) The Corporation will before classifying a building under category C-1, conduct their own independent inspection and assessment with the help of the Engineers of their Department and carry out a survey of such building(s). The report of Structural Audit shall be taken into account.

c) The Corporation shall consider the report of Structural Engineer appointed by the owners and/or occupants classifying the building as dilapidated and dangerous. If the owners and/or the occupants bring conflicting reports on the status of the building, the Corporation shall refer the matter to Technical Advisory Committee (TAC) under the Chairmanship of Director (ES&P) with at least 3 other members, Viz. City Engineer, Chief Engineer (DP) and Chief Engineer (P&D).

d) The TAC shall:

i) Carry out a visual inspection of the state of the internal and external plaster, plumbing, drainage, whether the doors and windows close properly, whether steel in columns is exposed,

whether there is settlement in the foundation, deflections/sagging, major cracks in columns/beams, seepages/leakages, staircase area and column condition, lift well walls, U.G. tank, O.H. tank column condition, parapet at terraces, chhajjas, common areas, terrace water proofing etc.

ii) Carry out specific tests like ultrasonic pulse velocity test, rebound hammer test, half cell potential test, carbonation depth test, core test, chemical analysis, cement aggregate ratio as may be considered by TAC as necessary.

e) If it is found after due notice that the building(s) is in a highly dangerous or in dilapidated condition, then in that event, the Corporation shall also make a list of the names of the tenants and/or occupiers in the said building and the carpet area of the premises in their respective occupation and possession including the floor at which the same has been occupied.

f) A copy of such list will be furnished to the landlord and/or owner/builder of the said building. The Corporation thereafter, will issue a notice under Section 354 of the said Act calling upon such tenants and/or occupiers to vacate the said premises and if such notice under Section 354 of the said Act has already been issued, then in that event the Corporation will give 7 days' notice to such tenants/occupiers, copies whereof will be furnished to the landlord for vacating the said building(s). If such tenant and/or occupier are not available, the Corporation shall affix such notice or Letter of Evacuation on any part of such premises.

g) The Corporation shall then take steps to turn off the water, supply, electric power and gas to such building immediately before the removal of occupiers.

h) In the case of a municipal owned building(s), the Corporation will issue Letter of Evacuation to every person in occupation of the said building or part thereof to vacate the

said building along with their belongings within the said period of 7 days from date of issuance of such notice of Letter of Evacuation in respect of municipal owned building(s). The notice issued to such occupiers shall contain the name of the occupier and the area in his occupation and also the floor at which the premises are located. In case, if such tenant and/or occupier are not available, the Corporation shall affix such notice or Letter of Evacuation on any part of such premises.

i) In the event, a person occupying such tenement whether of the privately owned building(s) or building(s) owned by Corporation or any other authority refuses to vacate the said premises, then the police shall remove such person from the said premises by using nominal force if required for the same.

j) The police may use such force as is reasonably necessary to remove such person and/or occupiers and/or allottee along with their belongings from the said premises without causing damage to their movables.

k) The Corporation may then demolish such dangerous and dilapidated building.

l) The rights of the tenants and/or occupiers and/or owners in respect of the said premises/property will not be affected by virtue of evacuation or demolition carried out by the Corporation of such dilapidated and dangerous building in exercise of the power under Section 354 of the said Act or by virtue of the fact that the Corporation is the owner of the premises. Such tenant and/or occupier and/or owner will be entitled to re-occupy the premises in respect of the same area after the reconstruction of the building subject to the prevalent provisions of law pertaining to redevelopment of the property or subject to any arrangement or agreement arrived at by and between such tenants and/or occupiers with the owner of the building. Any action of evacuation/removal/demolition will not affect the inter se rights of owners if there be more than one owner or there is a dispute as to the title of the property.

m) If there are any pending suits/proceedings and there is any restraint orders passed, the Corporation shall be free to apply for vacating and/or modifying such orders, which applications shall be decided on its own merits and in accordance with law.

n) In respect of the municipal buildings, it shall be the duty of the Corporation to provide alternate accommodation as early as possible in any of their premises to such tenant and/or occupier of the Corporation owned building till and until the said building is reconstructed by the Corporation or the tenancy of any of such occupier is determined in accordance with law.

o) In respect of the private owned buildings, if such building falls in cessed category as contemplated under the provisions of the Maharashtra Housing and Area Development Act, 1976, then in that event, it will be the duty of MHADA/ MBR&RB to provide temporary alternate arrangement in a transit camp for transit accommodation in accordance with law as early as possible.

p) In case privately owned buildings are demolished by the Corporation in exercise of power under Section 354 read with the present order, then the Corporation shall, while granting sanction of redevelopment, impose a condition in IOD (Intimation of Disapproval) that no Commencement Certificate will be issued under Section 45 of the MRTP Act, 1966 unless and until an Agreement either providing a Permanent Alternate Accommodation in a newly constructed building or a settlement is arrived at by and between the tenants and/or occupiers and the landlord in respect of the said demolished premises is filed with the Corporation at the earliest.

q) In case of buildings which have suddenly collapsed, to determine the reasons for such collapse it is desirable that forthwith a Committee be constituted headed by a former Municipal Commissioner and consisting of Former Chief Engineer of MHADA along with a Professor of VJTI and a

Professor of IIT, Powai having expertise in Structural Engineering as also an employee of the Corporation holding a post not lower than that of the Director (E.S.&P.) and such Committee will determine the cause of such collapse and inter-alia identify whether any Architect and/or Consultant and/or Municipal officers or other person/s is/are responsible in any manner whatsoever for such a collapse. The reference to the Committee will not in any way shall be a hindrance in the criminal investigations or the proceedings that may have commenced or may be commenced under the relevant criminal law. This no way would restrict the State of Maharashtra to pass appropriate order for any such inquiry or investigation.

10. The above order in no way restricts the power and scope and purpose of Section 354 of said Act. The Commissioner/Corporation and its Officers shall act in accordance with law. These guidelines will not affect any orders passed in pending proceedings and are not to be read and interpreted to restrict or permit the Corporation or any party to go beyond the statutory provisions of law. This order is necessitated essentially to make Section 354 effective and to see that human lives are not in any manner compromised. The Corporation and its officers to follow other pre-steps and provisions before issuing Section 354 notices and/or such other notices.

11. The list of dilapidated/dangerous C-1 category buildings/structures shall be published in advance on the website of the Corporation so that effective steps can be taken by all concerned, by all available modes and methods. A copy of this order shall also be published on the website of the Corporation and State of Maharashtra as also other Local Authorities etc.

12. It is reiterated that this order covers only C-1 category buildings which are unsafe and declared as dangerous, and the demolition, if any, shall be carried out by the Corporation in accordance with law and in no manner pre-empts/curtails the rights of any person/s from objecting and/or approaching

the Court and if a case is made out to pass appropriate orders on its own merits and in accordance with law. It is also clarified that during the interregnum, in appropriate cases, the Corporation would be at liberty to take all safety measures, including propping up, etc., of the buildings/premises and enclose/fence the surrounding area in accordance with law.

13. The rights and the contentions of the other parties to raise and/or agitate distinctive and individual pleas/issues of their respective matters separately are kept open. All the aggrieved parties shall be at liberty to approach the Court in case any clarification is required. Pendency of this Petition would not preclude the State Government to come out with appropriate policy to address the grievances of the tenants/occupiers or for that matter, the owners thereof.

(ANOOP V. MOHTA, J.)

(A.A. SAYED, J.)

BOMBAY HIGH COURT