

(2014) 02 BOM CK 0158

Bombay High Court

Case No: Writ Petition No. 1522 of 2013

M/s. Mehul Realtors Private Ltd.

APPELLANT

Vs

Mumbai Municipal Corporation
of Gr. Mumbai and Others

RESPONDENT

Date of Decision: Feb. 17, 2014

Acts Referred:

- Mumbai Municipal Corporation Act, 1888 - Section 354 522

Citation: (2014) 4 BomCR 683

Hon'ble Judges: Anoop V. Mohta, J; A.A. Sayed, J

Bench: Division Bench

Advocate: D.H. Mehta and Mr. S.B. Pawar and Ms. Swati Sawant instructed by S.K. Legal Associates, for the Appellant; Komal Punjabi for Respondent Nos. 1 to 3, Mr. V.S. Pande instructed by . Mr. S.U. Pandey for Respondent No. 4 and Mr. Hemant B. Dalal, Respondent No. 5, for the Respondent

Final Decision: Disposed Off

Judgement

Anoop V. Mohta, J.

In view of urgency, heard finally. The Petitioner as owner/landlord of the property bearing C.T.S. nos. 1211, 1211/1 to 8 with structure/building standing thereon known as "Pandya House" on plot no. 84-B of TPS III, situate at Sarojini Road, Vile Parle (West), Mumbai (for short the "property") has filed the present Petition and prayed for direction against Respondent nos. 1 to 3 (Mumbai Municipal Corporation and its officers) to take immediate steps/action for vacating and demolishing the dilapidated structure basically room premises nos. 1 and 11.

2. There is no dispute with regard to the dilapidated condition of the building in question and the related notices issued by the Corporation since 2008 onwards. Out of 14 structures/rooms, 13 rooms are already vacated by the occupants by settling the matter with the Petitioner-owner. Room premises no. 11 which was also the

subject-matter of the Petition has been demolished in view of settlement. The dispute remains with regard to room premises no. 1 which Respondent nos. 4 and 5 are claiming to be in joint possession along with sister Chandrika. Admittedly, suits are pending in the Small Causes Court filed by Respondent no. 4 for a declaration that the tenancy of the room along with appurtenant disputed land in question having an area of 59.48 sq. mtrs. and land having an area of 682 sq. mtrs. Respondent no. 5 has filed Suit no. 611 of 2011 in the Small Causes Court, Bandra, with regard to room no. 15 along with terrace area admeasuring 1425 sq. ft. So far as the present Petition is concerned, we are dealing with room no. 1 only as the statement is made that room no. 15 is already demolished. We are not at this stage dealing with the same. Let parties contest their respective claim in the pending proceedings. It is made clear that the Petitioner will abide by the decision so given by the Court in the suits filed by Respondent no. 4/5.

3. This matter was adjourned from time to time for settlement on the lines of settlement terms which the Petitioner has done with other occupants who have already vacated the premises. Respondent no. 4, who is present in the Court through the Advocate is willing to settle the matter on condition that the rights and contentions so raised in the civil suit in the Small Causes Court be kept open for adjudication/decision in every respect. He, on this, is willing to vacate the premises within four weeks.

4. The Petitioner, as recorded in order dated 20 January 2014, is willing to file Consent Terms and/or to provide permanent alternate accommodation on tenancy basis, in lieu of room no. 1 having an area of 59.48 sq. mtrs. as early as possible even before four weeks if the Respondents vacate the premises.

5. Respondent no. 5 who appears in person filed his affidavit-in-reply and agitated grievances which he has already raised in the pending suits. He is not willing to settle the matter. The disputed questions of fact raised by Respondent no. 5 just cannot be gone into at this stage of the proceedings in the present Writ Petition specifically in view of the fact of dilapidated condition of the building/premises and except Respondent nos. 4 and 5, all have already vacated the premises and the Petitioner has already demolished all those rooms except room no. 1 in question.

6. There is no serious dispute with regard to notices issued by the Corporation for demolition of the building in question, including that of section 354 of the Mumbai Municipal Corporation Act dated 09 May 2013. In view of the above position, it is difficult for the Court to overlook the observations/decision given by this Court in The Tadeswar Wadi Co-operative Housing Society Ltd. Vs. The State of Maharashtra Mantralaya and Others, which read thus:

18. Considering the setting in which the provisions are placed and the purport of those provisions, we have no manner of doubt that even though the primary obligation is on the owner and occupier to act upon the requisition of the

Corporation issued u/s 354 of the Act in relation to the structure in ruins or likely to fall, but that does not extricate the Corporation from its duty to remove such structure in public interest at the earliest. In doing so, the Corporation may have to resort to eviction of the occupants but that drastic action would be of a far lesser degree than the loss or damage to be caused in the neighborhood on account of sudden collapse of the dilapidated and dangerous building. Indeed, in the unreported decision in M/s. Whiz Enterprises Pvt. Ltd. (supra), the efficacy of these provisions has not been specifically dealt with. However, for the reasons already noted, we have no hesitation in taking the view that the petitioner-Society is justified in seeking direction against the Corporation for its inaction to take successive notices issued u/s 354 of the said Act to its logical end by removing the dilapidated and dangerous structure referred to therein. For facilitating the officials of the Corporation to discharge this duty, we have no manner of doubt that the police authorities would extend adequate logistical support to them, if so demanded and as may be warranted, which is the obligation of the police authorities u/s 522 of the Act.

19. Accordingly, we allow this Writ Petition and direct the Corporation to take the last notice issued to the Petitioner by the Corporation dated 21-3-2012 as also the individual notices dated 11-6-2012 given to the occupants, who has still not vacated the premises in their possession, to its logical end, in accordance with law, forthwith and in doing so, may take assistance of the local police authorities, who are obliged to provide all logistical support to the officials of the Corporation.

7. Therefore, by keeping all the points open and issues raised by Respondent nos. 4 and 5, in the interest of all, we are convinced that this is a case where the Respondent-Corporation needs to take steps in accordance with law, including drastic action in case the occupants, in spite of such situation, have not vacated the premises in their possession of the dilapidated building in question if required it to be demolished at earliest. The resistance by one occupant as referred to above should not prevent the Court, as well as the Respondent-authorities to take action though their dispute with regard to area of room/premises is pending. The family dispute also with regard to occupants of room no. 1 in question just cannot be gone into and/or decided in the present Writ Petition. The Petitioner even otherwise is not under an obligation to provide alternate accommodation to all occupants of one room, separately. However, the Petitioner is under an obligation to provide only one accommodation being legal heirs of the tenants and/or occupations. There is no question of providing three different accommodations to all the occupants as claimed by Respondent nos. 4 and 5 and/or sister as referred to above.

8. For the above reasons, we are disposing of the present Petition by directing the Corporation to take action against those occupants who have still not vacated the premises, in accordance with law, if necessary, by taking assistance of the local police authorities who are to provide all supports to the officers of the Corporation.

9. However, in the interest of justice, we are still inclined to grant four weeks" time to vacate the premises to the Respondent nos. 4 and 5 and the sister and/or settle the matter.

10. It is made clear that pending decision for the above reasons, the Petitioner and/or Corporation is not prevented from taking action of taking possession of the property (room no. 1) with surrounding land. The Petitioner is at liberty to proceed for demolition and/or construction on the suit property i.e. C.T.S. nos. 1211, 1211/1 to 8 with the structure/building standing thereon known as "Pandya House" on plot no. 84-B of TPS III, situate at Sarojini Road, Viole Parle (West), Mumbai. The Petitioner is at liberty to develop the property in accordance with law.

11. It is necessary to observe that the Petitioner has already settled the matter and paid substantial amount/compensation to other occupants. The investment so made and the development of the property which they have decided to develop just cannot be halted at this stage at the instance of one occupant who even otherwise will not be in a position to compensate the losses/damages suffered by the Petitioner because of such delay in development of the property in question. Therefore, the balance of convenience equally lies in favour of permitting the Petitioner to proceed with the development. However, it will be subject to decision with regard to rights of Respondent nos. 4 and 5 which need to be adjudicated in the Court in question.

12. The Petitioner/Respondent Corporation to take action as recorded above if Respondent nos. 4 and 5 fail to vacate the premises within four weeks. The Petition is accordingly disposed of. No costs. At this stage, Respondent no. 5 prays for stay of this order. Respondent no. 4 has not prayed for such stay. For the above reasons itself and as we have already granted four weeks time to vacate the premises/rooms, we decline to grant stay to this order. Prayer for stay is, therefore, rejected.