Talwalkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 15351 OF 2023

Drishti Hospitality Company Pvt Ltd & Anr ...Petitioners
Versus
Municipal Corporation of Greater Mumbai & Ors ...Respondents

WITH

WRIT PETITION (L) NO. 18261 OF 2023

Mehta Mahal Commercial Cooperative Society Ltd ...Petitioner
Versus
Municipal Corporation of Greater Mumbai & Ors ...Respondents

Mr Sharan Jagtiani, Senior Advocate, *with Priyank Kapadia, Manoj Agiwal, for the Petitioner in WPL 15351/2023 & for Respondent No. 8 in WPL 18261/2023.*
Mr Karl Tamboly, *with Hrushi Narvekar, Aneesa Cheena, Samit Shukla, Anuj Savla, Sayali Diwadkar i/b DSK Legal, for Petitioner in WPL 18261/2023 & for Respondent No. 7 in WPL 15351/2023.*
Ms PH Kantharia, GP, *with SB Gore, AGP, for the Respondent - State.*

CORAM G.S. Patel & Kamal Khata, JJ.
DATED: 25th September 2023

PC:-

1. In both Petitions, **Rule**.

2. Mathew Road is a narrow lane that runs in a roughly south-north direction from Charni Road to behind Opera House. Along this road lies a property facing the railway tracks. It is arguably one of the most disputed properties in South Mumbai. On a rough and ready reckoning, there are at least seven different proceedings pertaining to this building called 'Mehta Mahal', once owned by a charitable trust. That trust then entered into a series of transactions with various parties that led to extremely contentious litigations starting in about 2020. That was the year, in the middle of the pandemic and lockdown, when hearings were online, that civil suits running into over 3000 pages were filed in soft copy. Since then, there have been at least five separate writ petitions.

3. Mehta Mahal Commercial Cooperative Premises Society Ltd is Respondent No. 7 to WP (L) No. 15351 of 2023. It is itself the Writ Petitioner in WP (L) No. 18261 of 2023. The Society in its plaint agreed in paragraph 4 that Drishti Hospitality Company Pvt Ltd, the Writ Petitioner in WPL No. 15351 of 2023 is one of the owners of the property.

4. Drishti claims the building is now named Drishti House. The Society says that it is still Mehta Mahal. This should give us some idea of the flavour of these proceedings. The present brace of Petitions purports to relate to the structural condition of the building. Drishti says that there was a structural audit report of the Technical Advisory Committee ("**TAC**") of the Municipal

Corporation of Greater Mumbai (“**MCGM**”) of 2021 categorising the building as C2B, i.e. requiring urgent repairs. Mr Jagtiani for Drishti says there is a later report of IIT Mumbai which says that the building is dangerous, dilapidated and in need of being pulled down. He seeks a direction that Mehta Mahal be asked to produce a rival report if it wishes and then the matter be referred to the TAC. This is, according to Mr Jagtiani, what the MCGM has asked Mehta Mahal to do.

5. Mr Tamboly for Mehta Mahal says that pursuant to the TAC Report of 2021, the Society applied for and obtained repair permission. This is valid till 8th July 2024 and it has never been cancelled, revoked or rescinded till date. Nobody has directly challenged it. The Society has undertaken the repairs and necessary permissions have been obtained.

6. According to Mr. Tamboly, though Mr Jagtiani disputes it, 70% of the work is completed; but then each side seriously disputes almost everything the other side says.

7. We will need to consider the entire structure of this TAC and the resultant guidelines. A brief background is set out in our judgments in *Andheri Purab Paschim Cooperative Housing Society Ltd v Municipal Corporation of Greater Mumbai & Ors*,[1] and in *Hind Rubber Industries Pvt Ltd & Ors v State of Maharashtra & Ors*.[2]

1 Original Side Writ Petition (L) No 4234 of 2023, order dated 12th September 2023.

2 2022 SCC OnLine Bom 1640 : (2023) 1 Bom CR 342.

8. In *Andheri Purab Paschim CHSL*, we said:

> **1.** There is a persistent attempt to misread, misconstrue and misapply the interim directions of this Court in Writ Petition (L) No. 1135 of 2014 (later finally numbered as Writ Petition No. 1080 of 2015, *Municipal Corporation of Greater Mumbai v State of Maharashtra & Ors*). There, a Division Bench of this Court made an interim order on 23rd June 2014 on a case presented to it that buildings that were otherwise structurally sound, or at best required repairs, were being declared as structurally unsafe, unfit for human habitation, ruinous and dangerous and were being ordered to be pulled down. The allegation was that this was done at the instance of rapacious landlords and property owners with the active connivance of municipal officials. The Court therefore, framed a series of guidelines by its order dated 23rd June 2014. The Writ Petition was ultimately disposed of by a Division Bench of this Court (AS Oka, J, as he then was and RI Chagla, J) on 28th February 2018.[3] By that time, the Municipal Corporation of Greater Mumbai ("MCGM") had adopted the guidelines framed by the interim order of 23rd June 2014. An earlier version of these 'policy guidelines' of the MCGM were put on affidavit before the Division Bench (of Oka J, as he then was and RI Chagla J) at the final disposal of the Petition. The final policy guidelines are of 25th May 2018, captioned GUIDELINES FOR DECLARING PRIVATE AND MUNICIPAL BUILDINGS AS C-1 CATEGORY (DANGEROUS, UNSAFE).
>
> **2.** Some of the observations in the final order disposing of that writ petition are important for our purposes today. The Division Bench said:
>
> > **5.** The necessity of passing interim order dated 23rd June 2014 was the absence of a

---

3 2018 SCC OnLine Bom 816.

policy or guidelines. That is very clear from the observations made in the paragraph 8 of the said order. In view of the policy guidelines which are placed on record by the affidavit dated 8th February 2018 as modified on 23rd February 2018 now it is no longer necessary for this Court to exercise Writ Jurisdiction by issuing policy guidelines. We may make a useful reference to the decision of the Apex Court in the case of *Census Commissioner v. R. Krishnamurthy* [(2015) 2 SCC 796]. In paragraph 25 of the said decision, the Apex Court reiterated the well settled legal position that it is not within the domain of the Court to legislate and it is the function of the Courts to interpret the law by adopting certain creative process. In paragraph 25, the Apex Court observed thus:—

> "25. Interference with the policy decision and issue of a mandamus to frame a policy in a particular manner are absolutely different. The Act has conferred power on the Central Government to issue notification regarding the manner in which the census has to be carried out and the Central Government has issued notifications, and the competent authority has issued directions. It is not within the domain of the court to legislate. The courts do interpret the law and in such interpretation certain creative

process is involved. The courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. **The court may also fill up the gaps in certain spheres applying the doctrine of constitutional silence or abeyance. But, the courts are not to plunge into policy-making by adding something to the policy by way of issuing a writ of mandamus. There the judicial restraint is called for remembering what we have stated in the beginning. The courts are required to understand the policy decisions framed by the executive. If a policy decision or a notification is arbitrary, it may invite the frown of Article 14 of the Constitution. But when the notification was not under assail and the same is in consonance with the Act, it is really unfathomable how the High Court could issue directions as to the manner in which a census would be carried out by adding certain aspects. It is, in fact, issuance of a direction for framing a policy in a specific manner.**"

(*Emphasis in the original order*)

> 6. Therefore, in the light of the policy guidelines adopted by the said Corporation, **it will not be appropriate for this Court to add to the policy or to amend the said policy especially when this Court is not called upon to decide the legality and validity of the policy**.

(*Emphasis added*)

3. The time is not far, we suspect, when the legality and validity of the policy will be called into question. The observations of the Division Bench at the final disposal of the matter may not be, strictly speaking, a question of 'jurisdiction', but it will almost certainly affect the binding nature of such directions. Equally important is the fact that this has remained in the form of policy guidelines; that is to say, it is entirely unsupported by any statute.

4. We had occasion to visit some aspects of this law in a Division Bench judgment (one of us GS Patel, J was a member of that Bench with Gauri Godse, J) in *Hind Rubber Industries Pvt Ltd & Ors v State of Maharashtra & Ors*.[4]

5. What is being persistently misunderstood and misconstrued is the jurisprudential impact of these guidelines (irrespective of the source). These were to provide some sort of checks and balances against arbitrariness and unilateralism in public action, i.e., in the actions of the Municipal Corporation, an instrumentality of the state within the meaning of Article 12 of the Constitution of India, such actions always being susceptible to judicial review under Article 226 of the Constitution of India. The guidelines were not meant to, and could not, legislate. They were not intended to create new statutory or vested rights.

---

4 2022 SCC OnLine Bom 1640 : (2023) 1 Bom CR 342.

> **6.** The Technical Advisory Committee ("**TAC**") set up by these guidelines is a technical expert body. Its constitution is drawn from experts from the Municipal Corporation itself. What this has unfortunately generated is a whole new species of litigation where the TAC's expert opinion on technical structural engineering matters is now seen or said to be some sort of administrative or quasi-judicial action rather than what it is, i.e., a factual report on technical aspects of structural stability. Therefore, TAC reports and recommendations are now being perennially sought to be subjected to judicial review of a Writ Court under Article 226 of the Constitution of India.
>
> **7.** The TAC is not a quasi-judicial nor an administrative body. Other than a procedural irregularity or some form of violation of the principles of natural justice or a violation of Article 14 of the Constitution of India that is facially demonstrated, no interference is possible with the recommendations of the TAC.
>
> **8.** In any view of the matter, it is not possible to substitute the opinion of a TAC with an opinion of a court, least of all the Writ Court.
>
> **9.** Where there are conflicting views about the structural stability of a building, and unless the TAC report is shown to be vulnerable in law for one or more of the reasons well established in law for interference by a writ court, a court cannot possibly interfere at the behest of one party.

(*Emphasis added*)

9. As the extracted portion of the final order shows, the interim order possibly went far beyond what was jurisprudentially legitimate in legislating municipal law. That these guidelines have now been adopted by the MCGM in 2018 was said to the Division Bench of

Oka, J (as he then was) and RI Chagla, J in February 2018. But these have, admittedly, always remained as guidelines. There is no amendment to the Mumbai Municipal Corporation Act, 1888 ("**MCGM Act**").

10. We held that the purpose of the guidelines was entirely different. It was meant to serve as some sort of a check or balance against unilateral declarations of buildings as dilapidated or unsafe by property owners in connivance with the municipal officers. But that is a very different thing from saying that the guidelines in themselves create a new bundle of enforceable rights to demand constantly that individuals or groups of individuals must reassess the buildings independently of the requirements of the MCGM Act.

11. In the present case, it is difficult to see how a repair permission granted by the MCGM on the basis of a TAC report can now be scuttled or short-circuited by producing yet another report and demanding a fresh reference to the TAC. The time for the repairs has not yet passed. The repairs are not yet complete. Nobody has stayed or cancelled the repair permission granted by the MCGM.

12. These are not matters that lend themselves to an instant final decision nor to the grant of interim relief to either of the parties. Before we hear the private parties, we will need a detailed Affidavit in Reply from the MCGM. We are making it clear that we do not proceed on the assumption that a reference to the TAC is inevitable or must always follow. That will depend on what the MCGM says in

its Affidavit in Reply. When we hear the parties finally, we will also have to consider the effect in law of such guidelines adopted by a local body following interim directions of a court. Specifically, we will have to examine whether such guidelines, being still and always in the nature of guidelines, can ever create enforceable rights in favour of private individuals.

13. The MCGM and Mehta Mahal waive service of the Rule. It is not necessary to involve Respondents Nos. 8, 9 and 10, i.e., the State of MCGM, Commissioner of Police and other police authorities in the Drishti Writ Petition.

14. Similarly, in the Mehta Mahal PetMCGMn, the MCGM and Drishti waive service of the Rule.

15. All Affidavits in Reply to the Petitions are to be filed and served by 23rd October 2023. Rejoinders are permitted by 30th October 2023. Both Petitions are to be listed and Rule is made returnable at 2.30 pm. on 2nd November 2023.

(Kamal Khata, J) **(G. S. Patel, J)**