



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 638 OF 2024
WITH
INTERIM APPLICATION NO. 12380 OF 2024

M/s. Mehta & Co.

through its Partner and authorized
representative Mr. Adarsh Varma

Having its registered office at

Ground Floor, Plot No. 117/126,

St. Xaviers Street, Near Tata Hospital

Parel, Mumbai – 400 012

... Appellant

(Original Plaintiff)

Vs.

1. The Municipal Corporation of Greater
Mumbai through the Municipal
Commissioner, Having its Office at
Mahapalika Marg, Fort
Mumbai-400 001

2. The Assistant Commissioner (Estate)
F-South Ward, MCGM
Parel, Mumbai-400012

... Respondents

(Original Defendants)

Mr. Kunal Bhanage and Ms. Priyanka Acharya i/b. Mr. Akshay
Pawar for the Appellant/Applicant.

Mr. Chaitnya Chavan a/w. Mr. Amol Diwte and Mr. Om Suryavanshi
i/b. Ms. Komal Punjabi for BMC for the Respondent-BMC.

Mr. Mahesh Patil, Assistant Commissioner

Shri Subhash Sambre, Senior Estate Inspector.

Mr. Tukaram Ide, Estate Inspector.

CORAM : GAURI GODSE, J.**DATE : 4th APRIL 2025****ORAL JUDGMENT :**

1. This is an absolutely unfortunate case where the plaintiff's structure is high-handedly and illegally demolished by the officers of the Municipal Corporation of Greater Mumbai ("corporation") under the garb of implementation of the redevelopment scheme under Regulation 33(9) of Development Control and Promotion Regulation 2034 ("DCPR 2034"). The plaintiff was occupying the demolished structure for the purpose of providing charitable services of food and shelter to the poor and needy cancer patients receiving treatment for cancer from the Tata Memorial Hospital. The plaintiff's structure, which is demolished, was situated on a municipal plot that is the subject matter of the redevelopment scheme, which is situated adjacent to the Tata Memorial Hospital.

2. Pursuant to the order dated 14th February 2025, the appeal is taken up for final disposal at the admission stage. Since the structure occupied by the plaintiff is held eligible for permanent rehabilitation under the scheme as reflected in Annexure II, a submission was made on behalf of the appellant on the very first day of the hearing that the corporation may consider the plaintiff's

entitlement under the redevelopment scheme for rehabilitation. The appeal has been heard on various occasions, however, till date, the learned counsel for the corporation has not received any positive instructions on the suggestion made on behalf of the appellant. The only reason for the lack of instructions for considering the rehabilitation of the plaintiff is that the scheme for redevelopment has already been floated; hence, the corporation would not be able to rehabilitate the plaintiff.

3. Considering the manner in which the hearing of the appeal has proceeded, I find it necessary to record that time was granted to the learned counsel for the corporation to take appropriate instructions from the concerned officers who are authorised to decide on the plaintiff's entitlement. On 25th March 2025, the learned counsel for the corporation requested time to take instructions from Mr. Mahesh Patil, Assistant Commissioner and Mr. Prithviraj Chavan, Assistant Commissioner (Estate), with a submission that the officers shall remain present on the next date to enable the learned counsel for the corporation to respond to the suggestion made on behalf of the appellant as recorded in the earlier order dated 14th February 2025. Unfortunately, the officers have never remained present before the court. Learned counsel for the corporation submits that today Mr. Mahesh Patil, Assistant

Commissioner, is present and is authorized to take decision regarding the rehabilitation of the plaintiff. However, he submits that the plaintiff cannot be rehabilitated at this stage. It is important to record that admittedly, the demolition work has been carried out on the instructions of Mr. Mahesh Patil, Assistant Commissioner. Since there is no positive response from the corporation regarding the rehabilitation of the plaintiff, the arguments on the merits of the appeal are concluded today.

4. The appeal is preferred to challenge the refusal of the plaintiff's various prayers in the notice of motion, mainly the prayer for the reconstruction of the plaintiff's structure, which the corporation's officers demolished without any notice of demolition. The relevant facts leading to the reason for filing the suit and the notice of motion are as follows :

(a) The plaintiff is held entitled to a permanent rehab component as per Annexure-II dated 14th November 2008 for a commercial area of 538 sq.ft.

(b) The plaintiff's entitlement to a permanent rehabilitation structure for the area, as reflected in Annexure II, is undisputed.

(c) The plaintiff had raised a dispute regarding the plaintiff's entitlement to an area and claimed that the plaintiff would be entitled to a larger area.

(d) In view of the application filed by the plaintiff, measurement was carried out on the site with reference to the assessment extract, and the plaintiff was found to be in possession of 122.63 square meters, i.e. 1319.97 square feet. The said measurement is recorded in the corporation's letter dated 16th October 2023.

(e) Pursuant to the plaintiff's complaint and the society's complaint, the hearing was given on 3rd October 2023 to the plaintiff and other concerned parties by the Assistant Commissioner (F-South Ward). Based on the hearing and the submissions made by the plaintiff and other affected parties, the decision was taken on 11th October 2023, which is recorded in a letter/order dated 18th October 2023.

(f) The letter/order dated 18th October 2023 indicates that the plaintiff's claim for a higher area was not accepted, and it was held that the plaintiff would be entitled to 538 sq.ft. in the permanent rehabilitation structure. The order further recorded that as per the terms and conditions of the letter of intent, the

developer shall make temporary arrangements for alternate accommodation and accordingly submit an indemnity bond. It is further recorded that the plaintiff should vacate the premises within seven days, failing which the corporation would take the necessary action as permissible in law.

(g) It is also recorded that as per the tenancy verification list prepared by the corporation on 16th October 2008, the plaintiff would be entitled to an area of 538 sq.ft in the permanent rehabilitation structure.

(h) Thus, it was decided by the concerned Assistant Commissioner that the plaintiff was required to vacate the suit structure within seven days, failing which the corporation would take the necessary action as contemplated under the Mumbai Municipal Corporation Act, 1988 ("MMC Act") and the applicable circulars and guidelines.

(i) Being aggrieved by the said decision, the plaintiff filed L.C. Suit No. 73 of 2024 in the City Civil Court at Mumbai on 2nd January 2024. On 3rd January 2024, the plaintiff served notice to the municipal corporation intimating that the court would be moved for urgent relief on 4th January 2024 at 2.45 pm.

(j) In the morning of 4th January 2024, the corporation's officers demolished the plaintiff's structure. Hence, the suit is amended, seeking reliefs for a declaration that the demolition of the plaintiff's structure was illegal, bad in law, and without following due procedure. The plaintiff further prayed for directing the corporation to reconstruct the plaintiff's structure and, in the alternative, permitting the plaintiff to reconstruct the structure at the corporation's cost.

(k) In view of the illegal demolition, the plaintiff filed Notice of Motion No. 272 of 2024 seeking various reliefs, mainly permission to reconstruct.

5. The corporation opposed the application on the grounds that are summarized as follows:

(a) The redevelopment project and the approval of Annexure II on 14th November 2008 were not in dispute. The corporation contended that Annexure II consisted of 205 tenants, out of which 194 tenants were residential and six were commercial. It was contended that though not eligible for redevelopment, the sub-tenants were included for membership in the rehab component. The corporation relied upon a letter dated 14th May 2021 addressed by the

Deputy Chief Engineer to the Chairman of the Municipal Chawl regarding a revised letter of intent for the proposed redevelopment and the appointment of a new developer, which was approved for cluster redevelopment scheme by the High Power Committee on 29th July 2022.

- (b) The corporation further referred to the complaint dated 14th September 2023 received from the society alleging illegal use by the plaintiff and the business illegally carried out by the plaintiff, alleging that there was non-cooperation in the development work and the possession was not handed over.
- (c) The corporation further contended that the officers visited the plaintiff in the plaintiff's structure, and after issuing notice and giving opportunity of hearing the order dated 18th October 2023 was passed directing the plaintiff to vacate the structure within seven days.
- (d) It was contended that since the plaintiff failed to vacate the structure, the demolition action was taken on 4th January 2024 with police protection. Thus, the demolition carried out on 4th January 2024 was contended to be taken based on the order dated 18th October 2023.

6. After considering the rival submissions of both parties, the learned Judge of the City Civil Court rejected the notice of motion. The learned Judge held that the suit structure was demolished pursuant to the corporation's order dated 18th October 2023. By referring to the letter issued by the society and the approval of the cluster redevelopment scheme in 2022, the learned Judge observed that the relief in the main suit could not be granted at an initial interim stage. The learned Judge held that the demolition action was a triable issue for which the parties would be required to lead evidence. Hence, the learned Judge refused to grant relief of reconstruction to the plaintiff. Regarding other prohibitory reliefs, the learned Judge held that the maintaining of the status quo of the debris could not have been granted, as it can be compensated in terms of money. Hence, the plaintiff has filed this appeal.

7. The submissions made by the learned counsel for the appellant are summarised as follows:

(a) Except for the order dated 18th October 2023 impugned in the suit, the corporation failed to produce any order directing demolition. Though the corporation was intimated on 3rd January 2024 about the interim relief that would be pressed before the City Civil Court on 4th January 2024 at 2.45 pm, the

demolition work was carried out in the morning on 4th January 2024 in undue haste even before the plaintiff's application for interim relief could have been heard by the court.

(b) The plaintiff is carrying out charitable work by providing food and shelter to cancer patients undergoing treatment for cancer in Tata Memorial Hospital, which is adjacent to the land where the plaintiff's structure was situated. Though the plaintiff's tenancy rights were disputed, the plaintiff is held entitled to a permanent rehab component as per Annexure-II.

(c) The plaintiff was never intimated about any transit accommodation or payment of any transit rent as held entitled in terms of the order dated 18th October 2023. In the absence of any temporary transit accommodation or transit rent being made available to the plaintiff, there was never any occasion for the plaintiff to vacate the suit structure as it was never contemplated under the order dated 18th October 2023.

(d) Admittedly, none of the conditions directed in the order dated 18th October 2023 were at any time complied with calling upon the plaintiff to accept transit accommodation or transit rent. Therefore, the allegation of non-cooperation on the part of the plaintiff is frivolous and baseless. Only to defeat the plaintiff's

rights as claimed in the suit, a high-handed, arbitrary and illegal action of demolition was deliberately carried out by the officers of the corporation. Thus, the plaintiff suffered grave hardship as the structure where charitable work was being carried out for treating cancer patients was high-handedly demolished by the corporation.

(e) The plaintiff was never served with any notice alleging any illegal business or occupation in the suit structure. The plaintiff is held entitled to a permanent rehab component, and though the concerned Assistant Commissioner had issued directions vide order dated 18th October 2023 for following terms and conditions of the letter of intent, admittedly, no such compliance was made before carrying out the demolition. Thus, the action of the corporation of demolishing the suit structure is, on the face of it, high-handed, illegal and arbitrary. Thus, this is a fit case for exercising the discretion to grant a mandatory injunction, either directing the corporation's erring officers to reconstruct the suit structure or permit the plaintiff to reconstruct the suit structure at the cost of the corporation.

(f) The learned Judge of the City Civil Court failed to consider the important aspects of demolition being carried out without any

order directing the plaintiff to vacate the structure or any order intimating the plaintiff that the demolition work would be carried out. The plaintiff relied upon the measurement carried out by the corporation as recorded in the Corporation's letter dated 16th October 2023. The measurement carried out as per the actual occupation of the plaintiff is supported by the assessment extracts. Thus, even if the plaintiff's entitlement for the area claimed by the plaintiff as 1319.97 sq.ft is not accepted by the corporation, the plaintiff was admittedly occupying an area of 1319.97 sq.ft, which is high-handedly and illegally demolished by the corporation. Hence, the plaintiff is entitled to reconstruct an area of 1319.97 sq.ft. as reflected in the measurement letter dated 16th October 2023, which also records the exact identification of the plaintiff's structure.

8. The submissions made on behalf of the corporation are summarized as follows:

(a) The redevelopment scheme is floated under Regulation 33(9) of the DCPR 2034. In the scheme, the rights of 208 occupants are affected. The corporation is under obligation to consider the entitlement of all the occupants as per Annexure II. Only due to the plaintiff's non-cooperation

there were hurdles in the implementation of the redevelopment scheme. The developer had already intimated by letter dated 11th October 2023 that he was ready to pay Rs.35,000/- per month for alternate accommodation to the plaintiff, provided the possession was handed over. Thus, it was always open for the plaintiff to accept the transit rent from the developer and vacate the suit structure. The plaintiff failed to do so; hence, the corporation's officers were constrained to forcibly dispossess the plaintiff and demolish the suit structure. The concerned officers were well within their jurisdiction and powers to dispossess the plaintiff and demolish the suit structure.

(b) The directions in the order dated 18th October 2023 are clear and unambiguous. The order clearly called upon the plaintiff to vacate the suit structure within seven days, failing which the corporation would take action. Thus, there was no requirement to issue any fresh notice calling upon the plaintiff to vacate the suit structure.

(c) To support his submissions, learned counsel for the corporation relied upon an internal communication dated 3rd

January 2024. Though the said communication was not produced in the trial court, the learned counsel was permitted to place it on record before this court. By the internal communication dated 3rd January 2024, the proposal of the Estate Officer, F South Ward, was approved by the Assistant Commissioner for carrying out demolition with police protection and placing on record a report.

- (d) Learned counsel for the corporation relied upon the guidelines issued vide Circulars dated 17th November 2020 and 25th May 2018. Learned counsel for the corporation relied upon clauses (c), (e), (f) and (g) of the circular dated 17th November 2020. He submitted that pursuant to clause (g) of the circular on receipt of tenancy verification and after the tenancy verification by the concerned verification committee, Annexure II is prepared. Pursuant to the letter of intent issued, the officers are permitted to take action of vacating the structures for the purpose of redevelopment. Clause (iv) of clause (g) of the circular permits the officers to take action of forcible dispossession in case of non-cooperating tenants. In view of clauses 1.02, 1.08 and 1.10

of the circular dated 25th May 2018, immediately after completing the notice period of seven days, the action of eviction and dispossession is permissible. Thus, pursuant to the necessary guidelines issued by the two circulars, the concerned officers carried out work of demolition after taking police protection. Thus, the action of the corporation cannot be termed as unauthorised or illegal.

(e) Learned counsel for the corporation fairly accepted that the notice, as contemplated under Section 488 of the MMC Act, was not issued before evicting the plaintiff and carrying out the work of demolition. He, however, submits that even if the action of the corporation is held that it was without issuing any notice for actual demolition, the action of demolition cannot be termed as a nullity and that, at the most, the action would be irregular. He thus submits that irregularity, if any, would not entitle the plaintiff to a prayer of reconstruction at the interim stage. He thus submits that the corporation would be entitled to lead evidence to support their contention that the action was permissible.

(f) To support his submissions regarding the action being not nullity and, at the most, can be termed as an irregularity on

the part of the officers, learned counsel for the corporation relied upon the decision of the High Court of Calcutta in the case of *Ashutosh Sikdar vs. Behari Lal Kirtunia*¹ and the decision of the Apex Court in the case of *Al-can Export Private Limited vs. Prestige H. M. Polycontainers Limited and Others*². According to the learned counsel for the corporation, the full bench of the High Court of Calcutta held that if an action is held to be in contravention of Section 99 of the Transfer of Property Act, 1882, at the most, the action can be held as an irregular action and cannot be termed nullity. He submits that the view taken by the Calcutta High Court is referred to by the Hon'ble Apex Court in the case of *Al-can Export Pvt. Ltd.* He submits that the Hon'ble Apex Court has considered the distinction between nullity and irregularity. He, in particular, relied upon paragraph 89 of the decision of the Hon'ble Apex Court to support his submissions that the action of demolition in any case cannot be termed nullity.

(g) Learned counsel for the corporation submitted that if on the ground of irregularity, if any, the plaintiff is granted the order of reconstruction at this stage, it would amount to getting

¹ (1907) I.L.R. 35 Cal.61

² (2024) 9 SCC 94

unjust gain by the court's order. To support this submission, the learned counsel for the corporation relied upon the decision of the Apex Court in the case of ***Goa State Cooperative Bank Limited vs. Krishna Nath A (Dead) Through Legal representatives and Others***³.

(h) Learned counsel for the corporation submitted that a drastic relief of reconstruction at this stage would amount to the grant of final reliefs in the suit. At the interim stage, the plaintiff would not be entitled to a relief of mandatory injunction. Since demolition work was carried out due to the non-cooperation on the part of the plaintiff, he would not be entitled to any equitable relief. A mandatory injunction in such a form can be granted only in exceptional and rare cases. To support his submissions, learned counsel relied upon the decision of this court in the case of ***Mumbai Municipal Corporation of Greater Mumbai vs. Sushilaben I Patel***⁴. He submitted that this court has taken a view that mere illegality would not warrant such a drastic order unless it was established that the action was a malafide action done with any ulterior purpose to defeat the claim.

³ (2019) 20 SCC 38

⁴ SCC OnLine Bom 954

(i) Learned counsel for the corporation relied upon the well-established legal principles on the grant of mandatory injunction as settled by the Hon'ble Apex Court in the case of *Dorab Cawasji Warden vs. Coomi Sorab Warden and Others*⁵. He submitted that the plaintiff's grounds for a mandatory injunction do not satisfy the guidelines issued by the Hon'ble Apex Court. The present case cannot be termed as an exceptional case warranting the grant of any drastic relief of mandatory injunction.

(j) If granted, the mandatory relief sought by the plaintiff would jeopardise the rights of 208 occupants who are to be rehabilitated under the redevelopment scheme. Thus, neither equity nor balance of convenience falls in the favour of the plaintiff. Thus, according to the learned counsel for the Corporation, this is not a case for granting drastic relief of mandatory injunction.

9. To consider the submissions made by both parties, I have very carefully gone through the entire record of the appeal. I have also permitted the learned counsel for the corporation to place on record the copies of internal communication dated 3rd January 2024 and

⁵ (1990)2 SCC 117

the letter dated 11th October 2023 issued by the developer, and copies of the circulars, though the same, were never produced before the trial court. The reply filed by the corporation is bereft of any explanation that would support the corporation's action as sought to be relied upon based on the internal communication dated 3rd January 2024 and the circulars.

10. A perusal of the order dated 18th October 2023, clearly indicates that the direction to the plaintiff to vacate the suit structure within seven days was not a final notice to the plaintiff. The order of the corporation clearly records that the terms and conditions of the letter of intent, including the indemnity bond by the developer, were to be submitted. The order records the plaintiff's entitlement to 538 sq.ft in the permanent rehab component. The Order further clearly indicates that after seven days, if the suit structure is not vacated, appropriate action under the MMC Act and the applicable circulars would be adopted. Thus, on a plain reading of the directions of the order dated 18th October 2023, there can be no doubt that the plaintiff was never called upon to vacate the suit structure without compliance with the other directions as issued in the order regarding alternate arrangements.

11. Admittedly, after the order dated 18th October 2023, no communication was served upon the plaintiff. The only letter relied upon by the learned counsel for the corporation is the letter dated 11th October 2023, which, according to the learned counsel for the corporation, is submitted by the developer with the corporation. I have perused the letter. The letter is a conditional offer by the developer to make a payment of Rs.35,000/- per month for alternate accommodation to the plaintiff, provided the plaintiff submits legal documents of the tenancy. The corporation has already approved the plaintiff's entitlement to the permanent rehab component, and accordingly, the plaintiff's name is included in Annexure II. Hence, there is no question of the plaintiff submitting tenancy documents to the developer. Thus, the said letter can, in no terms, be termed as due compliance with the directions issued in the order of 18th October 2023. The letter relied upon by the learned counsel for the corporation makes the corporation's intention clear that in the absence of any arrangement for temporary alternate accommodation, the corporation, in undue haste and with a complete lack of sensitivity, has demolished the suit structure. Reliance placed by the corporation on the developer's letter smacks of malafide action. It is pertinent to note that after this letter the order dated 18th October 2023 is passed for due compliance.

12. I find it impossible to accept the submissions made on behalf of the corporation that the action of demolition was pursuant to the guidelines published by the circular dated 25th May 2018, read with the circular dated 17th November 2020. By the circular dated 25th May 2018, general guidelines are issued for declaring private and municipal buildings as C-1 category (Dangerous, Unsafe), in line with the guidelines issued by this court in Writ Petition (L) No. 1135 of 2014 and the guidelines circulated by the government regarding the dangerous and dilapidated buildings. It is, therefore, difficult to understand how the said guidelines would apply in the present case. Even if, for the sake of arguments, it is accepted that the guidelines were applicable, the guidelines provide for a complete procedure of issuing notice under Section 354 of the MMC Act after the initial procedure about structural audit report, etc., is completed. Clause 1.08 provides that a notice under section 354 to pull down the structure with a time period of seven days shall be issued by following due process. As per clause 1.10, after seven days notice period, the action of disconnection of the water supply, electricity, gas supply, etc. shall be initiated to safeguard and evacuate the building. Thereafter, the procedure to evict follows. The relevant guidelines thus indicate that even in the case of vacating the C-1 category, building safeguards are provided under the circular. Thus,

even in case of exigency, the relevant basic principles of natural justice are required to be followed as per the guidelines of giving notice of eviction and demolition.

13. By the circular dated 17th November 2020, revised procedural guidelines are issued for the redevelopment of municipal tenanted properties. Even this circular provides for appropriate provisions for providing transit accommodation to the tenants till the completion of the rehab building by the developer. Clause (g) of the circular dated 17th November 2020 reads as under:

“ G) Vacating of dilapidated building:-

- i. After receipt of IOD/CC, it shall be the responsibility of the developer, to provide transit accommodation to the tenants/occupants till completion of the rehab building; either providing in-situ Transit Camp or providing rent of the premises during the transit period.

Developer shall open ‘Escrow Account’ & deposit one year’s rent in that ‘Escrow Account’ before vacating the existing building. And further rent should also be deposited in advance two months before the expiry of the period, for further one year & so on till completion of the project. In nutshell, Developer shall ensure

depositing the rent in advance in the 'Escrow Account' as above till completion of the project.

- ii. Developer/Society shall submit the details of such 'Escrow Account' to AO (Society) who shall monitor the issue of transit rent to avoid delay and bring the delay, if any, to the notice of AC (Estate) so that preventive action is taken.
- iii. Developer and/Society has then to get vacated the dilapidated buildings categorized C1 and C2A as per the Structural Auditor's report immediately (but not later than one month, in any case) on receipt of LOI.
- iv. In case of non-co-operation of tenant to vacate the premises even after providing rent/transit accommodation, same shall be brought to the notice of Assistant Commissioner of ward with proofs of providing alternate accommodation or transit rent. In such cases, Assistant Commissioner of Ward shall initiate action on non-co-operative tenants as per the guidelines dated 25.05.2018 for declaring private and municipal buildings as C1 category (Dangerous, unsafe). Also action under section 105B of MMC Act, 1988, for cancellation of

tenancy will be initiated by Assistant Commissioner of Ward.

- v. The Developer has to repair the buildings as per the report of Structural Auditor till the time it gets vacated in case of C2A buildings. Developer shall also provide propping and to take all safety measures, the Developer/Society will be solely responsible to take all safety measures, vacate and repair of the dilapidated buildings once the LOI is issued.
- vi. In case of failure to take necessary action in respect of dilapidated building even on intimation, within reasonable time, LOI issued will be cancelled.
- vii. If there are any complaints before any statutory forum or any litigation before any Court of Law, relating to the redevelopment project, structural audit, repairs, eviction, demolition of structures, non-payment of rent/alternate accommodation etc. entire direct and indirect cost incurred by MCGM on this shall be borne by Society/developer and shall be paid to MCGM on raising demand to that effect.

14. The circular thus provides for the arrangement of transit accommodation before taking action, even in the case of non-cooperating tenants. The circular refers to the guidelines dated 25th May 2018 for the purpose of evicting non-cooperating tenants. Thus, both the circulars relied upon by the learned counsel for the corporation refer to following basic principles of natural justice of intimating occupants to vacate the structure and an obligation on the part of the developer to provide alternate transit accommodation and payment of transit rent. Thus, even as per the guidelines relied upon by the Corporation, before taking any action for demolition, arrangement of transit accommodation and action of eviction must be followed. In the present case, neither the steps were taken to evict the plaintiff nor any intimation was given for demolition.

15. In the present case, except for a vague letter dated 11th October 2023 by which the developer has given a conditional offer to make payment, admittedly, no provision is made for the plaintiff for transit rent or transit accommodation. Thus, the guidelines relied upon by the learned counsel for the corporation itself is sufficient ground to hold that without following due process and without any intimation to the plaintiff, the officers of the corporation, in unholy haste, demolished the plaintiff's structure on

the same day in the morning when the officers were already put to notice that the plaintiff would make an application for relief from the court.

16. The legal principles for granting a mandatory injunction are well settled in the decision of the Hon'ble Apex Court in the case of ***Dorab Cawasji Warden***. The relevant guidelines for granting a mandatory injunction are summarised in paragraphs 16 and 17, which read as follows:

“16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion."

emphasis applied

17. The aforesaid peculiar facts of the case clearly show that the corporation's officers have shown a complete lack of sensitivity while proceeding with the demolition of the structure which the plaintiff used for providing food and shelter to the cancer patients undergoing treatment in Tata Memorial Hospital. In a city like Mumbai, it is very difficult to get temporary shelter. Thus, I have no doubt in holding that the action of demolition has not only deprived the plaintiff of his rights but also deprived the cancer patients of their right to temporary shelter at the time of taking treatment.

18. Though the learned counsel for the corporation disputes that the plaintiff is carrying out the activity of providing food and shelter to the cancer patients, I see no reason to disbelieve the plaintiff's contention. Till date, there is never any notice issued to the plaintiff regarding the activities carried out by the plaintiff. A plain denial in the reply would not be sufficient to disbelieve the plaintiff's contention in the absence of any material on record that the plaintiff is not carrying out such noble charitable activity. Even otherwise, the plaintiff is highhandedly deprived of using his structure, which is held eligible for permanent rehab in the redevelopment project.

19. Under Article 51-A of the Constitution of India, it is a fundamental duty of every citizen to follow and abide by the laws. The corporation's officers are bound by the provisions of the MMC Act. They are under obligation to follow the process of law in its true spirit. The propriety of the law and the peculiar facts of this case demand justice by granting relief as prayed by the plaintiff.

20. This is indeed a rare and exceptional case where the grant of mandatory injunction must be issued in favour of the plaintiff. Not granting an injunction would amount to putting a premium on the high-handedness and arbitrary action of the corporation's officers. In the present case, the trial court has ignored the well-settled

principles of law for granting mandatory injunction. Not exercising the discretion to grant relief of injunction in such gross facts would amount to refusing the relief on unreasonable grounds. Thus, the view taken by the learned Judge of the City Civil Court is palpably incorrect and untenable.

21. Learned counsel for the corporation fairly admitted that the notice contemplated under Section 488 of the MMC Act was not issued. Hence, according to the learned counsel for the corporation, the action of demolition would, at the most, amount to irregularity. In the absence of compliance with the directions issued by the order dated 18th October 2023, I have no manner of doubt that the corporation's officers have acted high-handedly and arbitrarily for the reasons best known to them. Unholy haste shown on behalf of the corporation officers to demolish the structure without any intimation, and on the day when the plaintiff was to pray for interim relief before the court after notice to the corporation, smacks of malafides and arbitrariness. Internal communication dated 3rd January 2024 relied upon to show the directions for demolition, has a peculiar wording. The communication dated 3rd January 2024 signed by the Estate Officer and approved by the Assistant Commissioner on 3rd January 2024, records that “आज दि.

04.01.2024 रोजी पोलीस बंदोबस्त उपलब्ध झालेला आहे.” Thus, it appears that a hasty note dated 3rd January 2024 was prepared on 4th January 2024 to carry out demolition even before the plaintiff could move the court for urgent relief.

22. Thus, the well-settled triple test for the grant of discretionary relief is satisfied in favour of the plaintiff. The plaintiff has proved a prima facie case of his entitlement to a permanent rehab component in terms of Annexure II. The only dispute is regarding the actual area. The actual area for permanent rehab is not an issue under consideration in this appeal. However, the documents and, more particularly, the measurement recorded as per the letter dated 16th October 2023 is clear that the plaintiff was occupying an area of 1319.97 sq.ft. I have also recorded that the plaintiff and the cancer patients who were provided shelter in the suit structure have been deprived of their right to shelter. Hence, there is no doubt that there is an irreparable loss to the plaintiff if the injunction is not granted. In view of the reasons recorded, it is also clear that the balance of convenience is in favour of the plaintiff. Thus, the impugned order requires interference by this court.

23. The legal principles relied upon by the learned counsel for the corporation in the decision of this court in the case of ***Sushilaben***

Patel would not be of any assistance to the arguments raised on behalf of the appellant. The observation by this court regarding the grant of mandatory relief in the case of the action of demolition being malafide supports the plaintiff's case. It is unfortunate that the learned counsel for the Corporation has relied upon the legal principles in the decision of *Goa State Cooperative Bank Limited* and submitted that a person should not get unjust gain by the court's order. The question involved in the decision of the Apex Court was whether, under the provisions of Section 109 of the Maharashtra Cooperative Societies Act 1960, on expiry of the period fixed for liquidation, the proceedings for recovery of dues instituted/pending as against the members shall stand closed. In view of the facts of the case regarding the loan granted to the members of the society, the Hon'ble Apex Court observed that a person who has liability, cannot be permitted to reap the advantages on the basis of interim orders of the court. Thus, it was observed that no one should be allowed to use the judicial process for earning undeserved gains or unjust profits. In the gross facts of the present case, where the Corporation's officers have highhandedly and arbitrarily demolished the plaintiff's structure, it is unfortunate that instead of rectifying the action, such unfair and unreasonable submissions are made by the Corporation.

24. In the facts and circumstances of the case as discussed above, and for the reasons recorded above, I do not find any substance in the arguments made on behalf of the Corporation that the action of the officers would, at the most, be an irregularity and thus, the plaintiff would not be entitled to a mandatory injunction as prayed. I have recorded reasons to hold that the Corporation's officers failed to follow the basic principles of natural justice and have shown complete disregard towards their fundamental duties by not following the prescribed procedure under the MMC Act and the guidelines issued by the Corporation. Therefore, the legal principles settled in the decision of the Calcutta High Court and in the decision of the Hon'ble Apex Court in the case of *Al-Can Export Private Limited*, are of no assistance to the arguments made on behalf of the Corporation. The decision of the Calcutta High Court was concerning non-compliance with Section 99 of the Transfer of Property Act. The decision of the Hon'ble Apex Court concerns the recovery of debts and the auction sale conducted for recovering dues. Hence, I do not find any substance in the arguments made by the learned counsel for the Corporation, by relying upon the said decisions.

25. For the reasons recorded above, I am convinced that the

action of demolition in this case is highly arbitrary and malafide, as no due process has been followed. Hence, the plaintiff is entitled to restoration of the status quo ante. However, the fact that the grant of mandatory injunction to reconstruct is likely to affect the redevelopment process where the rights of 208 occupants are also involved cannot be ignored. Hence, to balance the equities, the reliefs prayed by the plaintiff can be modified by directing the corporation to provide a temporary alternate accommodation equivalent to the area that was occupied by the plaintiffs, i.e. 1319.97 sq.ft as recorded in the letter dated 16th October 2023 in the same vicinity. The noble activities carried out by the plaintiff to provide food and shelter to cancer patients undergoing treatment at Tata Memorial Hospital are important factors to be considered when providing temporary alternate accommodation. Hence, the plaintiff is entitled to temporary alternate accommodation in the equivalent area in the same vicinity. However, I find it necessary to clarify that the grant of any temporary alternate accommodation of the equivalent area would have no effect on the entitlement of the plaintiff for the permanent rehab component, which will be decided in accordance with the law in the implementation of the rehabilitation scheme under DCPR 2034 as applicable under the redevelopment scheme. Hence, the appeal deserves to be allowed

by issuing necessary directions to the corporation to provide temporary accommodation.

26. The aforesaid facts of the case indicate that in the absence of any due process, the corporation's officers high-handedly, arbitrarily and insensitively demolished the plaintiff's structure. Hence, the appeal deserves to be allowed with costs. Considering the gravity of the illegal action taken by the corporation, the cost in favour of the plaintiff can be quantified at Rs. 2,00,000/- which shall be paid by the corporation. The corporation would be at liberty to recover the amount of costs from the erring officers.

27. Hence, for the reasons recorded above, the appeal is allowed by passing the following order :

- (i) The order dated 26th June 2024 passed in L.C. Suit No. 73 of 2024 is quashed and set aside.
- (ii) The corporation shall provide temporary alternate accommodation for an area equivalent to 1319.97 sq.ft in the same vicinity to the plaintiff within four weeks from today.
- (iii) It is clarified that temporary alternate accommodation will be provided till the handing over of the permanent

rehab component to the plaintiff as permissible under the redevelopment scheme.

- (iv) The plaintiff would be entitled to the temporary transit accommodation only till the rehab component is offered to the plaintiff by following the necessary procedure under the rehabilitation scheme.
- (v) The corporation shall pay the amount of Rs.2,00,000/- towards the cost of litigation to the plaintiff. Costs shall be paid directly to the official representative of the plaintiff within four weeks from today.
- (vi) The corporation is at liberty to recover the amount of cost from the erring officers.
- (vii) The appeal is allowed in the aforesaid terms.
- (viii) All concerned to act on an authenticated copy of this order.

28. Learned counsel for the corporation at this stage seeks a stay of the implementation of this order. Considering the gravity of the facts and insensitivity shown by the corporation in demolishing the plaintiff's structure, I do not find any reason to stay the implementation of this order.

29. At this stage, I find it necessary to record that despite giving various opportunities to the concerned officers to respond to the suggestions made on behalf of the appellant and rectify the action, complete disregard was shown to the court by the officers by not even remaining present. This court recorded the request of the learned counsel for the corporation in an order dated 25th March 2025. The request of the learned counsel for the corporation was granted to grant an opportunity to the officers of the corporation to consider rectifying the illegal action, however, on 26th March 2025, the officers remained absent. Hence, the appeal was required to be adjourned again. Even today, out of the two officers, only one officer has remained present. I do not have any doubt in recording that the officers of the corporation have not only acted high-handedly and arbitrarily but have also shown disregard to the court by not providing appropriate instructions to the learned counsel for the corporation at the appropriate stage. Hence, I see no reason to grant stay to the implementation of this order. Hence, the prayer is rejected.

[GAURI GODSE, J.]