Wadhwa

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 20227 OF 2023

Anandrao G Pawar …Petitioner
Versus
The Municipal Corporation of Greater Mumbai & Ors …Respondents

---

Mr Mayur Khandeparkar, *with Abhijit Patil, for the Petitioner.*
Ms Pooja Yadav, *for the Respondent-MCGM.*
Mr Girish S Godbole, Senior Advocate, *with Joel Carlos & Leena Shah, i/b M/s Shah & Furia Associates, for Respondent Nos 7 to 12.*

CORAM **G.S. Patel &**
Kamal Khata, JJ.
DATED: **27th October 2023**

PC:-

1. **Rule**. Rule returnable forthwith.

2. On 31st August 2023 we passed the following order:

> "1. The Petitioner is the landlord of an immovable property which is described by Mr Khandeparkar for the Petitioner as being in a 'prime' location, chiefly because it is next to the Charity Commissioner's office. Whether this makes it a prime location or not is debatable. But the photographs that he shows us indicate that the building is

severely damaged. It was built sometime in the 1960s, and although this may seem incongruous being voiced in a building that was built around 1878, that building is undoubtedly dilapidated.

2. The contest is this. The Respondents represented by Mr Godbole believe that the building can be repaired. They say they have the necessary funds (and more) to effect those repairs without seeking reimbursement from the landlord. The landlord is in occupation of at least six of the tenements in the building. Until now, he had no proposal for redevelopment. It is for this reason that the tenants sought permission to repair the building at their cost.

3. The later Affidavit of the 10th Respondent, one of the tenants/occupants, is taken on record. It contains certain financial information, disclosures and undertakings.

4. There is a previous order that is brought to our notice. That was an order made on 27th July 2023 in a petition filed by some of these tenants. The lead petitioner was the present Respondent No. 7. The petition was disposed of permitting the tenants to obtain permission for structural repairs from the MCGM and directing the landlord to cooperate. At that time, the building was shown or said to have been repairable, but more importantly, although there was a representation by the present Petitioner-landlord, it was limited to saying that the challenge was to the categorisation of the building as C-2A, whereas the landlord contended that the building was a C-1 category. There was no proposal noted in the order by the landlord or on behalf of the landlord for a redevelopment of the building, i.e., for it to be brought down and redeveloped. More importantly, the filing of the present Writ Petition was noted and the order in the tenant's writ petition was expressly made subject to the outcome of the present Writ

Petition. For this reason, we can take up the rival contentions even today.

5. Mr Khandeparkar on instructions states that the Petitioner-landlord proposes to redevelop the building. He in fact has instructions to state that on redevelopment, all tenants will not only be reaccommodated, but they will be given premises on ownership basis free of cost. This is because the landlord proposes to use the incentive FSI for this purpose. We will not permit the Petitioner-landlord to deviate from this commitment to provide premises on ownership basis free of cost. This statement is, therefore, accepted as an undertaking to the court. The area of the premises will be as governed by law.

6. This effectively means that the tenant's proposal for repairs must necessarily be positioned after or subordinated to the owner landlord's proposal for redevelopment. We do not think that it is permissible in law to say that the owner's right to redevelop the property and to enjoy the benefits, profits and fruits of redevelopment can be allowed to be compromised because the tenants have put together enough funds to repair the building, thus rendering the redevelopment proposal infinitely more difficult and perhaps even impossible. There is no proposal by the tenants to acquire the ownership interest in the building. Especially when the tenants' interests are being thoroughly safeguarded on re-development, we see no reason to permit the repairs to proceed. The building is clearly uninhabitable. It is so dangerous from even the most casual glance that it would be impractical to accept that repairs would be done or could be done in a timely and cost-efficient manner. The tenants' own estimates are that the repairs alone will cost around Rs 70 lakhs, if not more. We do not see how redevelopment would prejudice the tenants.

7. At this stage, Mr Khandeparkar does not have a firmer proposal. We are not prepared to let the matter rest at this stage. Mr Khandeparkar realises this and asks for two weeks' time so that he can place on affidavit a more detailed proposal with more accurate timelines. In that proposal, Mr Khandeparkar says, Mr Godbole's concern will be taken care of, viz., that tenants should not be left as he says, "high and dry", outside the premises with no prospect of getting possession of the redeveloped premises. This proposal is subject, of course, to the commitment that we have accepted of ownership tenements free of cost.

8. By the next date, there must be on affidavit a clearly stated proposal with sufficient details and a copy must be given to Mr Godbole's attorney in advance. We make it clear that if we are dissatisfied with the proposal from the Petitioner, we will have little option but to permit the tenants to proceed with the repair proposal.

9. We clarify that we have not entered into any controversy regarding the Technical Advisory Committee's report.

10. List the matter on 14th September 2023."

3. The issue of law relates to Section 499 of the Mumbai Municipal Corporation Act, 1888 ("**Mumbai MC Act**"). On the one side, represented by Mr Khandeparkar is the Petitioner who is the owner of the property in question at plot No 83/B, CS No 944, Worli Division, Dr Annie Besant Road, Worli, Mumbai. As Mr Khandeparkar has never failed to remind us, this site is most easily located because it is next to the Charity Commissioner's office.

4. The contesting private Respondents represented by Mr Godbole are various tenants of this building. One of them used to

have a car showroom on the ground floor. It has not been used in a long time and this is *inter alia* apparent from the condition of the building.

5. The prayers in the Petition are directed to a Structural Assessment Report of the Technical Advisory Committee ("**TAC**") of 12th April 2022 saying that the building is categorised as C-2A meaning that it requires repairs without being evacuated. Then there are subsequent reports of the TAC of 12th April 2022 and 30th November 2022.

6. The decision of the Executive Engineer of 7th December 2022 recommending repair permissions; the order of 9th February 2023 of a Designated Officer of the Municipal Corporation of Greater Mumbai ("**MCGM**") granting a No Objection Certificate ("**NOC**") to carry out structural repairs by the tenants; and a decision of 24th May 2023 approving repairs by the tenants are also called into question.

7. As our order of 31st August 2023 notes, on 27th July 2023 an order came to be made in a Writ Petition (L) No 17609 of 2023 filed by the Respondents. At that time, the tenants continued to contend as they do even now, that the building was and is in the C-2A category. But the present Petitioner/owner consistently maintained (and still maintains) that the building is in the C-1 category.

8. On 31st August 2023, Mr Khandeparkar had limited instructions. There was a proposal to redevelop and tenants would

be reaccommodated on an ownership basis, but he did not have any further information at that time. The Petitioner/owner has since given Mr Khandeparkar better instructions. There is also an Affidavit filed thereafter.

9. Now on the factual aspects of the matter, which we can dispense with quickly, the Affidavit sets out the areas in occupation of each and then in paragraph 4 confirms that the tenants will be reaccommodated on an ownership basis. The Petitioner gives the details of a proposed development agreement and mentions the developer. There is also an assertion that the proposed developer has sufficient net worth. There are documents annexed to in support of the assertion of the financial credibility. Other documents annexed show various floor plans of the proposed redevelopment.

10. We are not in this Writ Petition commanding or directing redevelopment in any particular form. The question of law that falls for consideration is whether, merely on the basis of a structural assessment, a tenant of a building can wholly eclipse the valuable rights of development associated with ownership of a property by a property owner. It is well settled that ownership of a movable property carries with it several rights including the right to enjoy the fruits of development of that property to the fullest possible extent. If these rights are to be curtailed, this can only be done in accordance with law and without any form of expropriation.

11. If, however, the landlord of a tenanted building does absolutely nothing at all and allows it simply to go to ruin or even to collapse, the tenants are not without a remedy. This is provided in

settled law. It is recognized by both the Rent Act and also the Mumbai MC Act as amended. We considered some of these perspectives with aspects in a recent judgment in *Chandralok People Welfare Association v State of Maharashtra and Ors*.[1] We reproduce the relevant portions including the quotations of the applicable statutes and the necessary citations.

> 21. It is hardly contentious that ownership of a property necessarily entails a right to enjoy the benefits and fruits of development of that property. Nobody is denying Respondent No 6 these rights at all. But in law, and especially when there are tenants, these rights come with obligations. If we cast about to look for these obligations, we should find them in two places running in parallel. The first is of course under Section 17 of the Maharashtra Rent Control Act, 1999. We notice this not because we proposed to fashion any order under that section; clearly, we cannot. We do so only to note that there is not, as the 6th Respondent implicitly suggests, an entire vacuum regarding the rights of tenants whose homes have been demolished, and specifically, their rights to have those homes rebuilt, reconstructed or included in a redevelopment. Section 17 of the Maharashtra Rent Control Act, 1999 reads as follows:
>
> > **"17. Recovery of possession for repairs and re-entry—**
> >
> > (1) The court shall, when passing a decree on the ground specified in clause (h) of subsection (1) of section 16, ascertain from the tenant whether he elects to be placed in occupation of the premises or part thereof

---

11 2023 SCC OnLine Bom 2300 : *Neutral Citation*: 2023:BHC-OS:12498. Para numbers follow the SCC OnLine report.

from which he is to be evicted and if the tenant so elects, shall record the fact of the election, in the decree and specify in the decree the date on or before which he shall deliver possession so as to enable the landlord to commence the work of repairs.

(2) If the tenant delivers possession on or before the date specified in the decree, the landlord shall, two months before the date on which the work of repairs is likely to be completed, give notice to the tenant of the date on which the said work shall be completed. Within thirty days from the date of receipt of such notice the tenant shall intimate to the landlord his acceptance of the accommodation offered and deposit with the landlord rent for one month. If the tenant gives such intimation and makes the deposit, the landlord shall, on completion of the work of repairs, place the tenant in occupation of the premises or part thereof on the terms and conditions existing on the date of the passing of the decree for eviction. If the tenant fails to give such intimation and to make the deposit, the tenant's right to occupy the premises shall terminate.

(3) If, after the tenant has delivered possession on or before the date specified in the decree, the landlord fails to commence the work of repairs within one month of the specified date or fails to complete the work within a reasonable time or having completed the work fails to place the tenant in occupation of the premises in accordance with subsection (2) the court may, on the

> **application of the tenant made within one year of the specified date, order the landlord to place him in occupation of the premises or part thereof on the terms and conditions existing on the date of passing of the decree for eviction and on such order being made, the landlord and any person who may be in occupation shall give vacant possession to the tenant of the premises or part thereof.**
>
> **(4) Any landlord who, when the tenant has vacated by the date specified in the decree, without reasonable excuse fails to commence the work of repairs and any landlord or other person in occupation of the premises who fails to comply with the order made by the court under sub-section (3), shall, on conviction, be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees or with both.**
>
> (*Emphasis added*)

22. For our purposes though, and given the frame of the prayers and the Petition, we are concerned with the other public law interface and that is with Municipal Law. The Municipal Cooperation is not only a planning authority under the Maharashtra Regional Town Planning Act, 1966 ("MRTP Act") but it is also a local authority governed by a dedicated Statute namely the Mumbai Municipal Corporation Act, 1888 ("the MMC Act").

23. As we have seen, the prayer is framed under Section 499 of the MMC Act. This is a Section that falls under Chapter XIX of the MMC Act which deals with procedure

and, specifically, a sub section relating to recovery of expenses by the Commissioner and the General Manager. Section 499 of the MMC Act reads thus:

> **499. In default of owner the occupier of any premises may execute required work and recover expenses from the owner.—**
>
> (1) Whenever, the owner of any building or land fails to execute any work which he is required to execute under this Act or under any regulation or by-law made under this Act, the occupier, if any, of such building or land shall be entitled to execute such work in the manner set out in subsection (2).
>
> **(2) The occupier or occupiers interested in such work may seek the approval of the Commissioner for executing such work. The Commissioner shall grant the approval unless other measures are taken by him to execute the said work. While granting the approval the Commissioner shall specify the nature of the work. Upon such approval being granted, the occupiers shall be entitled to execute the said work and the expenses incurred for such work shall for all purposes be binding on the owner. The occupiers shall also be entitled to deduct amount of expenses incurred for such work from the rent which from time to time become due by them to the owner or otherwise recover such amount from them:**
>
> Provided that, where such work is jointly executed by the occupiers the amount to be deducted or recovered by each occupier shall bear the same proportion as the rent

payable by him in respect of his premises bears to the total amount of the expenses incurred for such work:

Provided further that, the total amount so deducted or recoverable shall not exceed the amount of expenses incurred for such work.

(3) If the owner fails to commence the reconstruction of the building which is pulled down in pursuance of section 489 read with section 354, within the period of one year from the date of demolition, the tenants shall be entitled to form an association or society and take appropriate steps for reconstruction of the building.

(4) The owner of the building, which is pulled down in pursuance of section 489 read with section 354, shall complete the reconstruction or redevelopment within a period of three years from the date of demolition of such building or such extended period as may be granted by the authority specified by the Government, by notification in the Official Gazette. If the owner fails to complete the reconstruction or redevelopment within the said period, then the tenants shall be entitled to form an association or society and take appropriate steps for reconstruction of such building.

(5) After reconstruction or redevelopment of such building as per sub-section (3) or (4), as the case may be, the area equivalent to the area occupied by the tenant shall be handed over to him by the owner, association or, the

society, as the case may be, without any further delay and within one month from the date of completion of reconstruction or redevelopment, as the case may be, of such building.

(6) The right of reconstruction to the tenants under sub-section (3) or (4) shall only be for reconstruction to the extent of the area of demolished building. The ownership rights and title to the land including reconstructed or redeveloped building shall continue to remain with the owner and the status of the tenants shall remain as tenants only;

Explanation I.—For the purposes of this section, the expression "expenses incurred for such work" means the total cost as certified by the Commissioner or an architect from the panel of architects notified by the State Government for the purposes of the Bombay Rents, Hotel and Lodging Houses Rents Control Act, 1947, together with simple interest at ten per cent. per annum on such amount calculated from the date of completion of such-work till the date of deduction or recovery thereof.

Explanation II.—The approval of the Commissioner given under this section shall include the right to enter the building or land for the purpose of execution of work.]

***Explanation III.*—For the purposes of this section, "the tenant" shall have the same meaning as assigned to it in clause**

> **(15) of section 7 of the Maharashtra Rent Control Act, 1999."**
>
> (*Emphasis added*)

24. Sub-sections (3) to (6) and Explanation III were added by the amending Mumbai Municipal Corporations (Amendment) Act, 2017, Maharashtra Act No XXII of 2017 dated 19th January 2017 with effect from that date.

25. This Section will necessarily have to be read with Sections 489 and 354. Section 489 also falls under Chapter XIX of the MMC Act. Sub-section (2) of Section 489 has a tabulation of various sections to which sub-section (1) relates. Section 354 is one of the sections in the tabulation of Section 489(2). Section 354, however, is under a different chapter. This is under Chapter XII and specifically under the sub-category of 'dangerous structures'. Section 354 speaks of removal of structures which are in ruins or likely to fall. Section 354 reads as follows:

> **354. 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 condition, 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 neighbourhood 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, of danger therefrom.

(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 passers by and other persons, with a convenient platform and hand-rail, 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.

(3) If it shall appear to the Commissioner that any building is dangerous and needs to be pulled down under sub-section (1), the Commissioner shall call upon the owner, before issuing notice thereunder, to furnish a statement in writing signed by the owner stating therein the names of the occupiers of the building known to him or from his record, the area in occupation and location of premises in occupation, possession of each of the respective occupiers or tenants, as the case may be.

(4) If he fails to furnish the statement as required by subsection (3) within the stipulated period, then the Commissioner shall make a list of the occupants of the said building and carpet area of the premises in their respective occupation and possession along with the details of location.

(5) The action taken under this section shall not affect the inter-se rights of the

> **owners or tenants or occupiers, including right of re-occupation in any manner.**
>
> **Explanation.—For the purposes of this section, "the tenant" shall have the same meaning as assigned to it in clause (15) of section 7 of the Maharashtra Rent Control Act, 1999.**"
>
> (*Emphasis added*)

26. Now if we have a look at this chaining of these three sections, we can see at once that it is the obligation of the MCGM under Section 354 as part of its wide civic duties in city management to remove structures that are in ruins or likely to fall. Then under Section 499, where a requisition or an order is made inter alia under Section 354 and the person does not comply, that work may be got done at the cost of the noticee under Section 354. Had matters stopped at that, as Respondent No 6 seems to suggest, then perhaps the Petition would have stood differently. But that is not the situation at all. Section 499 deals specifically with a situation of Section 354 and 489 being applied. Sub-section (3) was added by a recent amendment. It can safely be presumed that this amendment was necessitated finding that there was a lacuna in the statute that required to be filled, namely, the protection of persons who were affected by a Section 354 demolition or bringing down of a structure. Where those persons, not being owners were affected, the introduced sections, sub-sections (3) to (6) of Section 499 provided relief. Notably Section 499(3) mentions the word "tenants" and confers on them an entitlement to form an association and take appropriate steps for "reconstruction" of the building.

27. The 6th Respondent may be correct to this extent that subsection (3) of Section 499 does not speak of "redevelopment". Redevelopment may be a much wider

concept because it may involve the acquisition, distribution and utilization of additional FSI of various kinds. Reconstruction, at least for the purposes of this section would necessarily mean replacing that which once existed and was brought down. We believe that is a reasonable construction in the facts and circumstances of the case. This is inter alia clear from Section 499(6) because this speaks of the 'right of reconstruction' to tenants under sub-sections (3) and (4) of Section 499.

28. Explanation III to Section 489 and the Explanation to Section 354(4) tell us that for the word 'tenant' carries the same meaning as under Section 7(15) of the Maharashtra Rent Control Act, 1999.

29. If there is any dispute in regard to this distinction between "redevelopment" and "reconstruction", we imagine that it ends with a plain reading of sub-section (5) of Section 499, because this then speaks of 'equivalent areas' being 'reconstructed'. Of course, sub-section (5) uses the words "or redevelopment" as well but that would have to be assessed on a case to case basis. Sub-section (6) of Section 499 then speaks of "the right of reconstruction to tenants" under sub-sections (3) and (4) above and it clarifies that the extent of reconstruction is only to the extent of the area of the demolished building i.e., not redevelopment with loading of additional FSI but only to the extent of the FSI that was consumed by the now demolished structure. Again, the second sentence of Section 499(6) preserves the rights of the owners of the property and keeps the tenants as tenants. This is important because in the course of redevelopment, particularly under some provisions of the DCPR 2034 tenancies may be converted optionally to ownership. The statute does not give the tenants rights to convert tenancy into ownership. What it does is to preserve the rights of tenants as tenants.

30. This aspect of the matter really needs no further explanation. The question of law regarding the survival of tenancies after the demolition or bringing down of a building is no longer res integra. It has been conclusively decided by a decision of the Supreme Court in Shaha Ratansi Khimji & Sons v Kumbhar Sons Hotel Pvt Ltd[2] the fact that a tenanted building is brought down does not mean that a tenancy is extinguished or comes to an end.[3]

31. In this view of the matter, and having regard to the complete failure of Respondent No 6 to produce before us on affidavit or otherwise evidence of any tangible steps towards either reconstruction or redevelopment, and which, had it been before us, would only have resulted in orders and directions to the MCGM as the public authority, we turn instead to an examination of what is it that the authority has done in this regard. This has to be seen with the prayers in the Petition. They invoke, as we have noted Sections 489 and 499 of the MMC Act. The latter section gives bodies such as the Petitioner the right to come together in an association and the right to apply for and obtain a reconstruction permission. Obviously that permission must conform to all building regulations and to the limitations imposed by Section 499 itself as to the area proposed to be reconstructed etc. Ownership does not change as a result of that reconstruction. But we see no reason why the MCGM should remain a silent bystander for years and years together when it finds that there is a building that has been brought down, tenants have been

---

2 (2014) 14 SCC 1.

3 See also: *Hind Rubber Industries Pvt Ltd & Ors v State of Maharashtra & Ors*, 2022 SCC OnLine Bom 1640 : (2023) 1 Bom CR 342; *Andheri Purab Paschim Cooperative Housing Society Ltd v Municipal Corporation of Greater Mumbai & Ors*, Original Side Writ Petition (L) No 4234 of 2023, order dated 12th September 2023; *Drishti Hospitality Company Pvt Ltd & Anr v Municipal Corporation of Greater Mumbai & Ors*, and connected matters, order dated 25th September 2023 in Writ Petition (L) 15351 of 2023.

> evicted and there is no proposal before it for either reconstruction or redevelopment at the instance of the property owner. It seems to us to stand to reason that the MCGM can certainly demand from the property owner that the reconstruction or redevelopment be taken up in a stated time frame and if not the MCGM can cause steps to be taken under the MMC Act. Indeed, we believe that the MCGM must make such a demand. We reject out of hand any proposition that the MCGM does not have the power to compel or permit reconstruction at the instance of tenants affected by the bringing down of a tenanted building.
>
> (*Emphasis added*)

12. The present case is exactly the reverse of *Chandralok*. There the owner was unwilling to develop. He was unable to show any proposal whatsoever to development. He only said he was working hard — but that was it. Here, on the other hand, we have an owner who gives specifics and sets out the terms on which redevelopment will be done including converting tenancies into ownership. As opposed to this, we now have the opposition from Mr Godbole for the tenants apparently contending that these rights of the owner developer must be subordinate to the repair and reconstruction rights of the tenants. That submission has only to be stated to be rejected. To accept it would be contrary to the Rent Act and the Mumbai MC Act; it would result in elevating the rights of a tenant over those of a property owner who is willing to develop to reaccommodate all tenants.

13. There is no question of this Court exercising its writ powers to 'direct' a development. We are doing nothing of the kind,

although for the purposes of a prospective appeal we are sure that Mr Godbole would like us to do so.

14. The other argument that the building is not in fact dilapidated is a question of fact. Mr Khandeparkar says that the C-2A declaration itself says that if repairs are not carried out within a stipulated time the building will automatically become a C-1 category structure, i.e., dilapidated, dangerous and uninhabitable. Mr Godbole maintains that so long as there is no one C-1 category declaration, and only a C-2A declaration, the tenants are entitled to carry on repairs; or, alternatively, that the owner cannot be permitted to redevelop the entire structure in accordance with law, but must be limited and restricted only to effecting repairs. In other words, at the instance of the tenants, the rights of the property owner — including the right to enjoy the fruits of that property and the benefits of full-spectrum re-development in accordance with law — must be curtailed. There is nothing in law to support so extreme a proposition. Indeed, any reading of the sections we have set out above and considered in *Chandralok* points to the contrary: that where the owner does not exercise his rights, and stands idly by doing nothing to the prejudice of the tenants, the tenants are not without a remedy. Their remedy is prescribed in the statute. It is a limited remedy, viz., to obtain *reconstruction*, i.e., to have the building repaired or rebuilt to its original condition, but no more. This limited right of a tenant cannot be expanded to eclipse — indeed, obliterate — the full rights of a property owner willing to undertake re-development.

15. But we do not even need to go that distance. Let us take the case at its extremity, namely, that the building is *in perfectly sound condition*. The owner wishes to redevelop it. Can a tenant be then heard to say that the owner is precluded from undertaking a full-envelope redevelopment and from enjoying the benefits and fruits of ownership of that property just because a few tenants believe that it can be 'repaired'? We believe the answer to this question in law, on facts and in equity, is firmly in the negative and against the tenants.

16. Consequently, there is no requirement for us to set aside the declaration of the building's categorization. It may well now have moved from being repairable to being dilapidated. But that is not our concern. We need not delay the entire matter. What is of concern is therefore not prayer clause (a) but prayer clause (b).

17. If there was no development proposal by the builder, then we would, consistent with our view in *Chandralok*, have rejected prayer clause (b) as well. But now that there is a redevelopment proposal and the broad terms of it are set out, whether or not these are acceptable to the tenants is immaterial. They are being reaccommodated and their tenancies are being converted free of cost to ownership.

18. Accordingly, Rule is made absolute in terms of prayer clause (b) of the Petition which reads thus:

> "(b) That this Hon'ble Court be pleased to issue a writ of certiorari or writ in the nature of certiorari or any other writ order or direction, there by calling for the records and proceedings in respect of the (i) impugned decision of

> Executive Engineer & Designate Officer (Building & Factory), G/South Ward dated 07.12.2022 recommending to grant repair permissions in favour of occupants of subject building, (ii) impugned decision dated 09.02.2023 of Designated Officer, G/South Ward granting NOC to carry out structural repairs U/s. 499 of MMC Act in favour of occupants of subject building, and (ii) impugned decision dated 24.05.2023 of the Municipal Commissioner, MCGM granting permission/approval for repairs in favour of occupants of the subject building known as "Sheth Govindrao Smruti Building" situated at Plot No. 83/B, C.S. No. 944, of Worli Division, Dr. Annie Besant Road, Worli, Mumbai is bad in law, perverse and required to be quashed and set aside."

19. Consequently, any further commencement certificate that the MCGM has issued to the tenants is to be forthwith cancelled.

20. We however clarify that if, within a reasonable time, the Petitioner has not submitted a proposal for development to the MCGM, the tenants or an association of the tenants will be entitled to submit a proposal for reconstruction.

21. The Petition is disposed of in these terms. There will be no orders as to costs.

22. Mr Godbole seeks a stay of this order to carry it higher. There is no proposal from the tenants to provide any form of security for any loss to the owner a delay would inevitably entail, nor for the evident loss should there be a building collapse. What the tenants really seek is not just a right to dictate the terms of that tenancy

beyond anything the law contemplates, but to impermissibly expand tenancy rights to the prejudice of the property owner — without taking the slightest steps to acquire those ownership rights. The application is rejected.

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