

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1681 OF 2015
WITH
NOTICE OF MOTION (L) NO.488 OF 2020
WITH
CHAMBER SUMMONS (L) NO.196 OF 2019
WITH
NOTICE OF MOTION NO.212 OF 2019
WITH
NOTICE OF MOTION NO.151 OF 2019
WITH
INTERIM APPLICATION NO.1765 OF 2020
WITH
CHAMBER SUMMONS NO.263 OF 2015
WITH
INTERIM APPLICATION NO.1125 OF 2020
WITH
INTERIM APPLICATION NO.2252 OF 2020

Sadik Ali Mohammed Ali Noorani .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

Mr. Chirag Balsara i/b. Suresh Lanke, for Petitioner.

Mr.S.B.Gore, AGP for Respondent no.1-State.

Mr.PG.Lad with Ms.Aparna Kalathil, for MHADA.

Mr.A.Y.Sakhare, Senior Advocate with Mrs.Vandana Mahadik, for MCGM.

CORAM: DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.

DATE : JULY 3, 2021

PC:

1. A saga of a heritage building situated between the University of Mumbai and the Bombay City Civil & Sessions Court in the Fort area not more than about 400 meters from the Bombay High Court, known as “Esplanade Mansion”, previously the “Watson’s Hotel” has reached this Court, in the present proceedings. It is interesting to note as to how the parties have told us about Esplanade Mansion.

2. Esplanade Mansion (for short “the building”) was designed and constructed by the British between the year 1860 and 1863. It comprises of ground plus mezzanine floor and four upper floors. It is a peculiar framed structure comprising of cast iron stanchions/columns, wrought iron beams, all timber flooring including wooden planks and wooden beams supported on wrought iron beams through angle cleats. The walls comprise of light weight brick fills, in timber or metallic frames, resting fully on wrought iron beams or spanning across them using the frame or virendeel action of the framing members.

3. In the year 1860, the building was designed by a Civil Engineer Rowland Mason Ordish who was associated with the construction of St.Pancras Station in London. The building was fabricated in England and constructed on site. The external cast iron

frame closely resembles with the other high profile 19th century building such as 'the London Crystal Palace'. The original owner was John Watson who intended to use the building as Hotel, initially it was known as Watson's Hotel. It was distinguished by the wide open balconies on each floor that connected with guest rooms, which were built around 30 meters into 9 meters atrium in a courtyard arrangement. It is stated that the atrium was previously used as a ball room and had a glass skylight.

4. Though not relevant for the present proceedings, it is popularly remembered that Sir Jamsetji Tata in retaliation for being snubbed by the hoteliers for not being a European, set up his own Taj Mahal Palace Hotel at Appollo Bunder in Mumbai in the year 1903, which was within the site of the Esplanade Hotel. The Esplanade Hotel closed shop sometime after 1920. Sometime after 1960 the ownership of the building changed hands as also the nature of its occupation. It has a variety of residences and offices coming up. It is stated that the petitioner purchased the said building by deed of conveyance dated March 9, 1979 from TATA Sons Ltd.

5. Reasons apart as the years passed by, sadly, the building lost its splendour. In 2006 the Esplanade building was listed amongst

100 most endangered sites. A proposal for Victorian of art deco Ensemble was identified at no.1480 and the same was included in the tentative list on May 22, 2012. The same was received at the world heritage centre on January 29, 2014. Thereafter ICOMOS Consultant International Scientific Committee of shared built heritage and several independent experts and technical evaluation mission from ICOMOC visited the Esplanade Mansion from 6th to 11th September 2017. ICOMOC sought additional information which came to be furnished on September 5, 2017. An interim report was sent to respondent no.1 on December 22, 2017. ICOMOS granted approval to the said report on March 14, 2018. The report observed that all proposals for alteration and modifications of Cess building shall be presented to the Heritage Conservation Committee (“**the HCC**”).

6. In the meanwhile, respondent no.6-Maharashtra Housing & Area Development Authority (“**MHADA**”) issued a notice dated May 19, 2015 directing the petitioners to take requisite permission for repairing of the building. On May 20, 2015 another notice was issued by MHADA under Section 90(1) of the Maharashtra Housing and Area Development Act, calling upon the petitioner and the occupants to vacate the premises. The petitioner approached this Court by this petition challenging the said notices issued by the MHADA.

7. By an order dated June 12, 2015 passed by a coordinate Bench of this Court, the contention as urged on behalf of the tenants, that the building could be repaired and that the tenants are not required to be removed from the building was recorded. The Court observed that the tenants, however, shall remain in the building at their own risks and consequences. In the meantime the municipal corporation was directed to depute its Executive Engineer/an Architect to carry out the survey of the building and submit a report to the Court. Thereafter, on July 15, 2018 an incident occurred, namely, that some portion of the fourth floor of the balcony of the said building collapsed on the third floor balcony and the third floor balcony collapsed on the second floor, which resulted in collapse of the second floor balcony. This Court noted such incident in its order dated July 25, 2018. A submission on behalf of MHADA that the building is dilapidated and dangerous for human habitation, hence, required to be immediately pull down after evicting the occupants, was recorded. At that juncture, the tenants continued to assert that the building be repaired, while relying on some report of the year 2010. However, as the report being about eight years old and outdated, it was felt desirable that the condition of the building be looked into afresh by the experts. This Court hence directed that the Technical Advisory Committee (TAC) of the MCGM should inspect the building and make its report. In the meanwhile, the

Court permitted the owner of the building to submit an Online proposal alongwith requisite documents to the MCGM for carrying out tenantable repairs, which was subject to the report of the TAC. By a further order dated July 31, 2018 passed by a coordinate Bench of this Court, directions issued to the TAC, came to be recalled. The Court directed that the Indian Institute of Technology, Mumbai be appointed to submit a structural audit report of the building.

8. By a further order dated April 3, 2019, this Court vacated the earlier interim order and directed that the vacation notices be taken to their logical conclusion. It was also observed that the municipal corporation and the MHADA with police assistance would ensure that every single occupant, should be evicted therefrom. MHADA was directed to place before the Court the entire phasewise programme chalked out by it for repairing the building. It was also observed that in such exercise, none of the occupants were called upon to surrender their legal rights. In its further order dated June 21, 2019, this Court recorded a statement on behalf of MHADA that the building had become fully vacant. It also recorded MHADA's contention that the Court should take up the issue of MHADA bringing down the building in terms of the report submitted by IIT, Mumbai. On the other hand, the Court noted submissions as made on behalf the municipal corporation,

that the heritage committee set up under the auspices of the municipal corporation was of a contrary opinion that the building need not be pulled down and that there was a possibility of restoration and repairs of the building which could be conserved. It was urged that the stakeholders be permitted to intervene and present a scheme for restoration. The Court recorded that the Heritage Committee was willing to consider the issue of restoration. The proceedings were accordingly adjourned expecting that the Heritage Committee would put its report for consideration of the stakeholders.

9. At the hearing of these proceedings held on August 8, 2019, the municipal corporation placed on record a communication from Deputy Municipal Architect (Development Plan), setting out that the Heritage Committee had opined that the committee of experts be formed comprising of conservation architects/experts, structural engineers having expertise in repairs/restoration of steel/C.I. structures, as may be directed by this Court. The Court passed an order observing that if the owner was willing to repair and restore the structure and preserve it, in that event, such right of the owner was paramount in character and he can be deprived of it only by the process known to law. It was observed that for such course of action, if any, the Court would have to be enlightened as to whether the State Government was

prepared to take any such steps. In its further order dated December 2, 2019, the Court noted that MHADA's prayers that it be relieved of its undertaking to carry out repairs/restoration work of the building, on the ground that in pursuance to the order passed by this Court, the IIT Mumbai had examined the structural stability of the building and had recommended demolition of the said building. The Court observed that there are divergent views inasmuch as the Indian National Trust for Art and Cultural Heritage (**INTACH**), the petitioner in Public Interest Litigation (L) No.57 of 2019, had asserted that the report of the IIT, Mumbai suffered from several flaws and that the said building can be repaired/restored. In view of such divergent views, the Court was of the opinion that an independent committee of experts be constituted comprising of Mr.Chetan Raikar, Structural Engineer (IIT Kanpur); Ms.Abha Narain Lambha, Conservation Architect; and Mr.Vikas Dilawari, Conservation Architect. The Court accordingly directed that the Committee shall inspect the building and after carrying out all necessary tests, assess its structural stability and submit its report to the Court setting out its views as to whether the building can be repaired/restored or the same needs to be demolished. Parties were accordingly directed to hand over all necessary papers and records of the building to the said committee. The committee was also directed to indicate the approximate cost that may be incurred to carry out such

repairs/restoration. The MHADA was also directed to permit the members of the committee to enter the building for the purpose of undertaking inspection, necessary for preparation of the report.

10. At the hearing of these proceedings held on January 27, 2020, a report submitted by Mr.Pankaj Joshi and Ms. Abha Lamba, Construction Architect as well as the report of Mr.Chetan R.Raikar, Structural Engineer were taken on record. Thereafter on February 20, 2020 this Court after hearing the parties on the reports passed an order recording that the petitioner/owner by his letter dated February 18, 2020 addressed to his Advocate had expressed his willingness to bear the repair and refurbishment cost and overheads which was estimated at Rs.50,00,00,000/- (Rupees fifty crores). A statement as made on behalf of the petitioner was recorded that an affidavit would be placed on record setting out the scheme as to how the building shall be repaired and refurbished.

11. It is on the above backdrop, we have heard the learned Counsel for the parties.

12. Mr.Balsara, learned Counsel for the petitioner has submitted that as on date an amount of Rs.20 crores has been

maintained in a separate bank account by the petitioner which would be utilised for the structural repairs/restoration of the building. In this context, he has also drawn our attention to the petitioner's affidavit whereby a letter of the petitioner addressed to his Advocate confirming that an amount of Rs.20 crores is lying in his bank account is placed on record. In so far as the balance amount is concerned, Mr. Balsara states that the same would be arranged from different sources including from the tenants. Mr. Balsara would submit that an additional affidavit dated May 27, 2021 is filed by the petitioner placing on record inter alia a bar chart showing the stages in which the work would be carried out. It is stated that as per the bar chart, an amount of Rs.20 crores would be an adequate fund for restoration till the 9th quarter of the proposed work. Mr. Balsara would submit that the petitioner is also agreeable to adopt appropriate procedure to obtain permissions from the different authorities so that the work of restoration can be commenced and executed in the event the permissions are granted.

13. Mr. Sakhare, learned Senior Counsel appearing for the Municipal Corporation submits that it would be necessary for the petitioner to make an application to the heritage committee which would consider the proposal of the petitioner for structural repairs/restoration of the building. He submits that after the heritage

committee takes a decision, the petitioner will have to approach MHADA so as to seek its no objection and thereafter, submit necessary proposal to the municipal corporation which would be the ultimate authority to grant permission to the petitioner.

14. Mr.Lad, learned Counsel appearing on behalf of MHADA has submitted that in the event the heritage committee grants its approval for undertaking structural repairs and restoration of the building, and if a proposal is received by MHADA from the petitioner, for its approval, such approval would be taken up for decision as expeditiously as possible.

15. Having heard learned Counsel for the parties and having perused the record, we are of the opinion that since the building in question is a world heritage structure and of historical importance, the same ought to be repaired and restored which is also the petitioner's claim and the opinion of the experts committee as appointed by the Court. It would thus be appropriate that the petitioner is permitted to move a proposal before the heritage committee seeking its approval to undertake such works of repairs and restoration. Such proposal/application be made by the petitioner to the heritage committee within six weeks from today. In the event such

proposal/application is made, the heritage committee shall consider the application and take an appropriate decision on the same in accordance with law, in its earliest meeting to be held after receipt of the petitioner's proposal.

16. In the event the heritage committee decides to grant an approval to the petitioner's proposal for repairs and restoration of the building, the petitioner is then permitted to approach the MHADA and the Municipal Corporation by a necessary proposal/application for obtaining permissions for commencement and execution of the repair and restoration work of the building.

17. As the monsoon has already set in and in the event the petitioner intends to undertake any urgent protective work, the MHADA shall permit the petitioner and its representative to access the building to undertake such work.

18. If execution of the repairs and restoration work of the building is permitted, the petitioner shall take all necessary care and caution of maintaining the safety standards as required by law not only qua the workers who would be deployed in undertaking the work but also qua the safety of those in the adjoining premises and on the streets.

The compliance of such safety measures be ensured by the Municipal Corporation from time to time.

19. As the entire procedure as noted by us above is being undertaken by the petitioner, the demolition notices issued by the MHADA shall stand suspended till the proposals/applications of the petitioners are decided by the respective authorities.

20. Ordered accordingly.

21. Before parting, considering the sad story of this heritage building, we feel deeply concerned as to whether the State Government and its authorities like MHADA and Municipal Corporation should not work out effective measures and/or a robust scheme so as to preserve the heritage buildings in the city of Mumbai. There can be no two opinions that there are large number of such beautiful buildings not only in the Fort area constructed during the British times privately owned and occupied, but also, elsewhere in the city. Such buildings at all times have added to the glory and fame of this beautiful city. We have good laws to protect ancient monuments but the implementation of such laws to protect them as also to protect the heritage buildings is certainly not adequate and in fact dismal. Such buildings/monuments

are neglected and not maintained. If the authorities were to devise an effective mechanism by conforming to the norms of law, the state of affairs would not have been as to what is the fate of the Esplanade Mansion today. It may not be out of place to state that in many parts of the world, there are much older buildings like the Westminster's Abbey in London constructed many centuries back, however with time to time and appropriate maintenance, such buildings have been preserved and have maintained the glory of such cities. In our opinion, the issue as raised in the present proceedings is an eye opener and an impetus for the authorities to devise an effective mechanism to protect and restore heritage structures. Some positive approach and a will in this regard would go a long way to maintain such heritage buildings for all times to come, as it is impossible to construct such structures in the contemporary times. We leave these aspects to the wisdom of the authorities, as we can go no further.

22. The petition is accordingly disposed of . No costs.

23. In view of disposal of the writ petition, Notice of Motion (l.) No.488 of 2020, Chamber Summons (l.) No.196 of 2019, Notice of Motion No.212 of 2019, Notice of Motion No.151 of 2019, Chamber Summons No.263 of 2015 and Interim Application Nos.1765 of 2020,

1125 of 2020 and 2252 of 2020 would not survive and the same are accordingly disposed of.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)