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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2789 OF 2015**

Rizwan Abdul Hamid Shaikh and Ors. ... Petitioners

Versus

The Thane Municipal Corporation and Ors. ... Respondents

Mr. Anilkumar K. Patil, for the Petitioners.

Mr. N.R. Bubna, for the Respondent No.1.

Mrs. M.P. Thakur, AGP, for Respondent Nos.2 and 3.

**CORAM : A.S. OKA &
REVATI MOHITE DERE, JJ.**

DATE : 11th AUGUST, 2015

PC.

. Considering the controversy involved, the Petition is forthwith taken up for final disposal. Heard the learned counsel appearing for the Petitioners and the learned counsel appearing for the first Respondent. The learned AGP represents the second and third Respondents. This Petition relates to a building which is more particularly described in paragraph 1 of the Petition. It is not in dispute that the said building is owned by the first Respondent – Municipal Corporation. The substantive prayer in this Petition is for issuing a direction to the first Respondent to carry out repairs to the said building.

2. By order dated 7th May, 2015, the report of expert M/s. Archinova Design INC was called for on the issue whether it is necessary to pull down the building or whether the building can be repaired. Accordingly, a report has been submitted by M/s. Archinova Design INC. A conclusion has been recorded in the said report that it is possible to repair the said building. The learned counsel appearing for the Petitioners on the earlier date had stated that the Petitioners and other occupants are willing to carry out repairs to the said building at their own costs. Today, the learned counsel appearing for the first Respondent has tendered on record a letter dated 10th August, 2015 addressed to him by the legal advisor of the first Respondent – Municipal Corporation on behalf of the first Respondent – Municipal Corporation. The said letter is taken on record and marked 'X' for identification. In the said letter, the Municipal Corporation has stated that :-

- A] The said Corporation has no objection if the Petitioners carry out repairs to the said building at their own cost;
- B] Before commencing the work of carrying out repairs, the building shall be vacated;
- C] Repairs shall be carried out under the supervision of M/s. Archinova Design INC;

- D] After completion of repairs, a certificate should be obtained of M/s. Archinova Design INC that the building has become habitable;
- E] While the work of repairs is in progress, the Petitioners shall shift themselves to another accommodation;
- F] While carrying out repairs of the building, if there is any loss of life or property, the responsibility shall be of the Petitioners.

3. The letter further states that the Municipal Corporation has no objection for permitting the Petitioners to carry out repairs subject to compliance with the aforesaid conditions.

4. The learned counsel appearing for the Petitioners states that the Petitioners represent all the occupants of the building in question and in fact all the occupants are ready to bear the cost of repairs. He states that if M/s. Archinova Design INC finds that repairs cannot be carried out unless the building is vacated, the occupants of the building will vacate their respective premises and will shift to another accommodation at their own cost. He states that the Petitioners are ready and willing to file affidavit to that effect in that behalf of all the occupants. He states that the affidavit will also state that if during the period when repairs are in progress, if any loss is caused to anyone,

the occupants shall undertake to take responsibility thereof.

5. In view of the statements made in letter dated 10th August, 2015 and the statements of the learned counsel appearing for the Petitioners, we dispose of the Petition by passing the following order :-

ORDER

- (i) It will be open for the Petitioners and other occupants of the building described in paragraph 1 of the Petition to carry out repairs to the building at their own cost subject to condition of compliance with following conditions:-
 - (a) Repairs shall be carried out under the supervision and as per the advise of M/s. Archinova Design INC;
 - (b) The Plans and specifications of the proposed repairs shall be submitted by the Petitioners and the occupants of the said building to the Municipal Corporation at least one month before the commencement of the work of repairs;
 - (c) The Petitioners and all other occupants shall file an undertaking on oath in this Court within a period of one month from today stating therein that in the event M/s. Archinova Design INC require the building

to be vacated, the Petitioners and all other occupants shall vacate their respective premises at their own cost and will make arrangements elsewhere at their own cost. In such event, they shall reoccupy the repaired building only after a certificate is submitted by M/s.Archinova Design INC to the first Respondent – Municipal Corporation certifying that the building is in habitable condition after carrying out the repairs. Undertakings to further state that the work of repairs shall be carried out by the Petitioners and occupants at their own risk. In the event, there is any loss of life or loss of property due to repair work, the Petitioners and all the occupants shall be solely responsible for the liability arising out of the said loss;

(d) Undertakings as aforesaid shall be filed in this Court within a period of one month from today;

(e) Within a period of two weeks from today, the Petitioners shall file on record an affidavit giving the names and other particulars of all the occupants of the building;

(ii) As it is the case of the Petitioners that some of the premises in the building are in possession of the first

Respondent – Municipal Corporation, it is obvious that the Municipal Corporation will not be required to file undertakings as aforesaid. However, on being called upon by M/s.Archinova Design INC to vacate the premises in its possession, the first Respondent shall remove itself from the premises of the said building and shall reoccupy the same only after a certificate of fitness as aforesaid is submitted by M/s. Archinova Design INC;

- (iii) It is obvious that repairs shall be carried out at the cost of the Petitioners and the other occupants and they shall not be entitled to claim any reimbursement of the said expenses from the first Respondent – Municipal Corporation. A statement to that effect shall be incorporated in the undertakings to be filed by the Petitioners and other occupants;
- (iv) We make it clear that permission granted to the Petitioners and the occupants to carry out repairs to the said building will not create any equity in their favour and it will not affect their existing legal status and rights in respect of the premises in their respective possession;
- (v) With the above directions, the Petition is disposed of;
- (vi) For reporting compliance regarding filing of

undertakings, plan and specifications of the proposed repairs, the Petition shall be listed on 14th September, 2015 under the caption of Directions. We make it clear that the work of repairs can proceed only after compliance report is produced in this Court;

- (vii) We make it clear that notwithstanding the disposal of the Petition, it will be open for the Petitioners and other occupants to adopt appropriate proceedings on the basis of letter dated 19th March, 1999.

(REVATI MOHITE DERE, J)

(A.S. OKA, J)