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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO.957 OF 2015
WITH
CIVIL APPLICATION NO. 1172 OF 2015
IN
APPEAL FROM ORDER NO.957 OF 2015**

Maya P. Vaswani & Anr. ...Appellants

Vs.

Municipal Corporation of Greater Mumbai & Ors. ...Respondents

Mr. A.Y. Sakhare, Sr. Advocate a/w. Mr. Siddhesh Bhole a/w.

Mr. Archan Shah & Ms. Gauri Vaidya i/b. Haresh Jagtiani &
Associates for Appellants

Mr. A.V. Diwate for Respondent Nos. 1 & 2 for MCGM

Mr. Virag Tulzapurkar, Sr. Advocate a/w.

Mr. Suraj Iyer i/b. Ganesh & Co., for Respondent No.3

Mr. Ashish Kamat a/w. Mr. Gaurav Gopal

i/b. Wadia Ghandy & Co., for Respondent No.4

CORAM : MRS. ROSHAN DALVI, J.

DATED : 16TH SEPTEMBER, 2015

P.C. :

Rule. Returnable forthwith.

1. The appellants are statutory tenants of one member of respondent No.3 Society, the building of which is sought to be demolished under a notice issued under Section 354 of the MMC Act. The notice has been challenged in the suit filed in the Bombay City Civil Court. The appellants / plaintiffs in the suit applied for interim relief of injunction. The learned

Judge considered two reports advising demolition. The plaintiffs had not produced the structural audit report. Though it has been strenuously argued by Mr. Bhole that the Court must consider and evaluate reports produced by both the parties and has contended that the appellant would now produce the report of his structural auditor which must be evaluated by the Court vis a vis the report produced by the developer, in this case before the Learned Judge of the Bombay City Civil Court there were no contrary reports, which were required to be considered. The learned Judge would have been bound by the subjective satisfaction of the competent authorities who are experts and engineers who made the report as per the judgment in the case of **Girish Mulchand Mehta Vs. Mahesh S. Mehta in Appeal No. 338 of 2009 in Arbitration Petition Lodg. No.493 of 2009 dated 10th December, 2009 (Coram: Swtanter Kumar, C.J. & A.M. Khanwilkar, J)**. In fact, the appellants have conceded that the building needs repairs. Mr. Tulzapurkar would argue that the building was also previously repaired and cannot be repaired again and again.

2. The lis between the appellant herein and respondent Nos. 3 & 4 has been agitated before. The appellants are the only occupants who have disputed the resolution of the society and the act of the society in redeveloping the building by demolishing the present building. The appellants are not

members of the respondent No.3 society. They claim to be statutory tenants of one member. That member has assigned his interest in favour of the redeveloper, respondent No.4. A suit for specific performance of an oral agreement between the appellants and the said member has been filed and in which respondent No.4 would, as an assignee in interest, be concerned.

3. It is stated by the appellants that if respondent No.3 would make them members and respondent No.4 would not object, he would allow the demolition. This would show the oblique interest and motive of the appellants. That cannot be considered in a suit challenging notice under Section 354 of the MMC Act. That would certainly be considered in the suit for specific performance.
4. Hence the impugned order is correct and the appeal is dismissed. Civil application is disposed off accordingly.

(ROSHAN DALVI, J.)

CERTIFICATE

**Certified to be true and correct copy of the original signed
Judgment /order.**