

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.136 OF 2006

Mr. Bharat Choksey & Others. .. Petitioners
Vs

Life Insurance Corporation of India
and Others. .. Respondents

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Shri Deepak Chitnis i/by M/s. Deepak Chitnis Chiparikar & Co for the
Petitioners.

Ms.(Dr.) Poornima Advani along with Shri Omprakash Jha i/by The Law
Point for the Respondent No.1.

Shri Ram Apte, Senior counsel along with Shri V.A. Thorat, Senior
counsel along with Shri J.J. Xavier and Shri Vinod Mahadik for the
Respondent Nos.2 to 4 BMC.

Ms. Geeta Shastri, Additional Government Pleader along with Shri Amit
Shastri, AGP for the Respondent No.7 State.

Shri Rui Rodriques along with Shri D.A. Dubey for the Respondent
No.5.

Shri Karan Ruhana i/by Dastur Kallambi and Associates for the
Respondent No.6.

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CORAM : A.S. OKA &
REVATI MOHITE DERE, JJ
DATED : 24TH JULY 2015

ORAL JUDGMENT (PER A.S. OKA, J)

1. Rule has been already issued in this Petition. In view of
various orders passed by this Court, and considering the status of the
building subject matter of this Petition that we have taken up this
Petition for final hearing. The building subject matter of this Writ
Petition under Article 226 of the Constitution of India is known as

General Assurance Building located at 232 Dr. D.N. Road, Fort, Mumbai-400 001. The said building was constructed in the year 1908. It is not in dispute that the First Respondent Life Insurance Corporation of India (for short “the LIC”) which is constituted under the Life Insurance Corporation Act, 1956 is the owner of the said building. The claim of the First Respondent is that it is the Lessee of the land below the said building. The challenge in the Petition as originally filed is to the notice issued under Section 354 of the Mumbai Municipal Corporation Act, 1888 (for short “the said Act of 1888”) which records that the building is in a dilapidated condition and it needs to be pulled down. It will be necessary to make a reference to the subsequent events. The Rule was issued by this Court by an order dated 20th December 2005. Various interim directions were issued under the said order. We must note here that the said order records that the third floor of the building was not in existence. The Paragraph 6 of the said order records that an Application was made by the First Respondent LIC for grant of permission for carrying out repairs to the said building. In fact, the grievance of the Petitioners who are claiming to be the tenants in respect of the said building has been noted in the said order that the said Application has not been considered by the Mumbai Municipal Corporation.

2. It will be necessary to make a reference to the various orders made by this Court from time to time. The orders dated 17th July 2007 and 14th August 2007 deal with the issue of the Application made by the First Respondent LIC. On 19th January 2013, a statement was made by the learned Additional Solicitor General of India who represented the First Respondent LIC that the appropriate proposal shall be given by the First Respondent LIC on or before the next date for pointing out that if the building is permitted to be demolished, as to how the reconstruction can be made at the cost of the First Respondent LIC. The order dated 5th July 2013 which is passed after hearing the Petitioners and the First Respondent LIC records that the building is in structurally precarious condition. It also records that all the occupants have vacated the building. The Clause (3) of the said order issues a direction to the Municipal Corporation to safeguard the building. The order dated 26th July 2013 directs the Mumbai Municipal Corporation to consider whether the building is not capable of being repaired and must, therefore, be demolished and reconstructed. The Mumbai Municipal Corporation was directed to take appropriate decision.

3. It will be necessary to make a reference to the order dated 8th April 2013 passed by a Division Bench of this Court. The Paragraphs 1 and 2 of the said order read thus:-

- “1. From the report which is shown to us by learned counsel appearing on behalf of the Corporation, it appears that the building in question is in a totally dilapidated condition and in all probability the said building will have to be reconstructed. Learned counsel for the Corporation to make a definite statement on the next date and tell this Court whether it is possible to repair the said building or the building will have to be demolished and reconstructed. Mr. Dada, learned senior counsel for respondent No.1-LIC has submitted that they have already applied to the State Government for renewal of lease. He further submits that however, since the said land is a scheduled W land, the B.M.C. is supposed to consider the question of renewal of lease. Respondent No.1-LIC to inform this Court whether they have made an application for renewal of lease with the Bombay Municipal Corporation. If an application has been preferred by respondent No.1-LIC for renewal of the lease, the Corporation shall thereafter take a decision in accordance with law and the State Government should also decide the terms and conditions of renewal of lease.
2. It is clarified that the Bombay Municipal Corporation may take appropriate decision and give directions to LIC to pull down the building subject to the rights and contentions of the tenants in the building.”

(Underlines added)

4. Thus, a representation was made to this Court by the First Respondent LIC that it has applied to the State Government for renewal of the lease. A statement was made by the learned senior counsel representing the First Respondent LIC that the land is a Schedule W Land and, therefore, it is the Municipal Corporation which is supposed to consider the proposal for renewal of the lease. Therefore, a

direction was issued to the Municipal Corporation to take a decision in accordance with law on the application if made by LIC. Again this Court clarified that the Municipal Corporation may take appropriate decision and give directions to the First Respondent LIC to pull down the building. We may note here that even the First Respondent LIC had filed a Writ Petition in this Court seeking a direction to the Municipal Corporation to take action in accordance with law for demolition of the said building on the ground that the same is in a dilapidated condition. The present Petition along with the Writ Petition filed by the First Respondent LIC came up before a Division Bench on 14th July 2014. Clause (i) of the order passed on that day reads thus:-

“The submission is made by the learned counsel appearing for the respective parties that the building, “General Assurance Building” situated at 232, Dr. D.N. Road, Fort, Mumbai, is in dilapidated condition (C-1 category) and the tenants have already vacated the premises in the year 2005 itself. Except the Mumbai Heritage Conservation Committee, no one is opposing the demolition and development of the property. Ms. Sonali Dhande, Sub-Engineer (Arch.) for Mumbai Heritage Conservation Committee is present in Court and seeks time. Respondent (BMC) The Corporation to take safety measures.”

(Underline added)

5. This order was passed in both the Petitions in presence of the learned counsel representing the Petitioners in the present Petition and the counsel for the LIC. We have carefully perused the record of the Petition. We find that none of the parties to the present Petition or

to the Petition filed by the First Respondent LIC applied for any modification or clarification of the said order. Thus, in no uncertain terms, this Court observed that even the Petitioners in this Petition were not opposing the demolition of the building.

6. Then comes the order dated 30th July 2014 when this Court directed the Mumbai Municipal Corporation to take instructions with regard to the specific powers of the Municipal Commissioner as provided in Regulation 67 of the Development Control Regulations, 1991 (for short “the DCR”) to override the opinion and recommendation of the Mumbai Heritage Conservation Committee.

7. We may thereafter refer to the order passed by this Court in the Petition filed by the First Respondent LIC. It appears that on the basis of the order passed by this Court in both the Petitions, the Municipal Commissioner stepped in and he passed an order by exercising the powers under the Regulation No.67 of the said DCR. He directed demolition of the building by overriding the opinion of the Heritage Conservation Committee. When the Petition filed by the First Respondent LIC being Writ Petition No.2380 of 2014 came up before this Court on 21st April 2015, the opinion of the VJTI was placed before the Court which recorded that the repairing of the structure of the building was ruled out. Clauses 1 and 2 of the said order read thus:-

- “1. We have perused the opinion of VJTI. The opinion records that repairing of the structure of the building of the petitioner is ruled out. Report makes a very serious observation that the building is located in a busy area and any collapse of wall will lead to loss of innocent lives which should be avoided by prompt dismantling of the existing structure. Report of the VJTI records that in the opinion of its experts, collapse of the wall is likely in near future. The contention of the Heritage Committee is that the building can be saved and something can be said about the report of the VJTI as nothing adverse has happened during last two years. It is not possible to accept that only because nothing adverse has happened, the report of expert like VJTI is erroneous. Our attention has been invited to the fact that the building is situated abutting D.N.Road in Fort area and there are very large number of pedestrians who pass by the side of the building.
2. Considering the powers vesting in the Municipal Commissioner and considering the fact that unfortunate fall of the building may have very drastic consequences, we hope and trust that the Municipal Commissioner of the Mumbai Municipal Corporation will step in. The minimum which is expected is that steps will be taken by the Municipal Corporation to ensure that in the event of collapse of the building, the lives of the pedestrians are not endangered. The Commissioner may consider of calling a meeting of all the stake holders in the controversy. The whole dispute has arisen because the Municipal Corporation is of the view that the building needs to be pulled down, but the Heritage Committee has contrary views.”

(Underline supplied)

8. It is, perhaps, by the reason of this order that the Municipal Commissioner took action. There is one more event which is necessary to be considered. The Technical Advisory Committee (TAC) of the Mumbai Municipal Corporation made a visit to the said building on 29th April 2015 and submitted its opinion.

9. The Technical Advisory Committee (TAC) visited the site and submitted a report in writing in May 2015 stating that it concurred with the opinion given by the Veermata Jijabai Technological Institute (VJTI) that the structure is beyond repairable measures and needs to be demolished.

10. In terms of the directions issued by this Court in Writ Petition No.2380 of 2014 filed by the First Respondent LIC, the Commissioner of the Mumbai Municipal Corporation heard the Petitioners in the present Petition, the Mumbai Heritage Conservation Committee (MHCC) and the First Respondent LIC. The Municipal Commissioner by order dated 5th May 2015 directed that the demolition of the said building shall be carried out under the supervision of experts and necessary barricading and measures be taken so that the pedestrians' lives are not endangered in the process of demolition. He

also directed that with the assistance of the MHCC, the demolition team should salvage material of heritage value and keep it in safe custody so that the same could be used at the time of reconstruction.

11. After the said order was passed by the Municipal Commissioner, in the light of the said order, the Writ Petition No.2380 of 2014 filed by the First Respondent LIC was disposed of. A permission was granted by this Court to amend the present Petition in light of the subsequent events of the order of the Municipal Commissioner and the report of the TAC.

12. The learned counsel appearing for the Petitioners invited our attention to the report of the TAC. He also invited our attention to the judgment and order dated 23rd June 2014 of this Court in the Writ Petition (L) No.1135 of 2014 (Municipal Corporation of Greater Mumbai v. State of Maharashtra and others). He invited our attention to the directions issued by this Court for dealing with the dangerous and dilapidated buildings classified as falling in Category C-1 by the Municipal Corporation. He invited our attention to the various sub-clauses of Clause (d) of Paragraph 9 of the said judgment and order. He urged that in the face of several reports of the experts submitted by the Petitioners recording an opinion that the building could be repaired that the case was referred to the TAC. He pointed out the mandate laid

down by this Court is that the TAC has to perform various tests as set out in Clause (d) of Paragraph 9. Referring to the relevant portion of the report of the TAC, he urged that the members of the TAC have not even inspected the entire building. Moreover, none of the tests as specified in Clause (d) have been carried out by the TAC. He urged that in the light of the decision of this Court, unless there is a proper TAC report on the structural stability of the said building submitted after carrying out all the tests specified in the said order, the notice under Section 354 of the said Act of 1888 cannot be allowed to be implemented. He also invited our attention to the order passed by this Court on 20th December 2005 issuing Rule in the present Petition. He pointed out that at that stage, this Court was of the view that the building could be repaired and that was the reason why several directions were issued under the said order directing the Municipal Corporation to consider the proposal of the First Respondent LIC. He urged that the First to Third Petitioners are the tenants of the First Respondent LIC and the Fourth Petitioner represents the tenants and occupants of the said building. He relied upon various decisions of this Court and the Apex Court and especially the decision in the case of *Shaha Ratansi Khimji and Sons v. Kumbhar Sons Hotel Private Limited*¹. Relying upon the said decision, he urged that even if this Court upholds the action proposed under Section 354 of the said Act of 1888 and the said building is demolished, the rights of the tenants in

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respect of the premises in the building remain intact and all of them have a right to be accommodated in the reconstructed or redeveloped building.

13. The learned senior counsel representing the Municipal Corporation submitted that the order dated 5th May 2015 passed by the Municipal Commissioner records that a concession has been given by the Petitioners that they have no objection for demolition of the building. He pointed out that the Petitioners contended before the Municipal Commissioner that they have no objection for demolishing the building, but the facade of the building should be maintained. He pointed out the correspondence made earlier by the Petitioners in which it is accepted that the building was not repairable. He did not dispute that the TAC did not carry out the tests as specified in the judgment and order dated 23rd June 2014 of this Court. He, however, pointed out the relevant portion of the report of the TAC which records that the TAC members went upto the first floor, but found that staircase had collapsed. He submitted that the judgment and order dated 23rd June 2014 cannot be read as if it is a Statute. He urged that the directions which are incorporated in various sub-clauses of clause (d) of Paragraph 9 of the said judgment and order do not apply to load-bearing building or a load-bearing structure. He urged that the tests specified therein can be carried out only in respect of RCC buildings. He submitted that the reputed institution like VJTI and the TAC of the Municipal

Corporation consisting of various experts have come to the conclusion that the building needs to be pulled down. He urged that even the Commissioner of Municipal Corporation after examining the record has come to the same conclusion on 5th May 2015. He submitted that considering the location of the building, if there is a collapse of the building, it may result into the loss of lives of the passers-by and the pedestrians.

14. While supporting the submissions made by the learned senior counsel appearing on behalf of the Mumbai Municipal Corporation, the learned counsel representing the First Respondent LIC urged that the Petitioners have no right as the premises occupied by them earlier are not in existence. She urged that as the land on which the said building is standing is a Schedule W land, the lease cannot be renewed. She also made a reference to Section 91 of the said Act of 1888 and submitted that the lease cannot be renewed. We must note here that during the last two hearings, we had called upon the learned counsel appearing for the First Respondent LIC to make a statement on instructions on the issue whether in the event of the renewal of the lease and in the event of the First Respondent LIC constructing a new building in place of the old building, the Petitioners will be accommodated. But the learned counsel appearing for the First Respondent LIC is unable to make any statement.

15. We have carefully considered the submissions. It is true that when the Writ Petition was admitted for final hearing on 20th December 2005, this Court thought it fit to direct the Municipal Corporation to consider the Application made by the First Respondent LIC for permitting repairs and/or reconstruction of the building. However, much water has flown thereafter. We have already pointed out that in the year 2015, a report of the VJTI, a reputed engineering institution in Mumbai was placed before this Court which after making the structural assessment of the building, recommended the demolition of the building and which also noted the possibility of a disaster resulting from the collapse of the building thereby posing a grave danger to the passers-by and pedestrians. It is in the light of the report of the VJTI that this Court by an order dated 21st April 2015 directed the Municipal Commissioner to step in and take action in accordance with law. The Municipal Commissioner heard all the parties including the Petitioners and exercised his powers under the Regulation 67 of the said DCR. While appreciating what is held by the Municipal Commissioner, we must note what is recorded by this Court in the order dated 14th July 2014. We have already reproduced the said order which records submissions of all the parties including the Petitioners herein that the building is in dilapidated condition (C-1 Category) and the tenants have vacated the premises in the year 2005. Importantly, it also

records that except the MHCC, no one has opposed for the demolition and the development of the property. As stated earlier, what is recorded in the said order was never challenged by any party. We may also note here that the perusal of the correspondence made by the Fourth Petitioner which is annexed to the Notices of Motion filed by them clearly indicates that even the Fourth Petitioner-the Tenants and Occupants Association accepted that it is not possible to repair the building. There are two such letters annexed to the affidavit in support of the Notice of Motion No.616 of 2010 taken out by the Petitioners. The first letter is dated 13th October 2008 and the second one is dated 3rd December 2008 which are addressed to the Regional Manager of the First Respondent LIC. From the said letters, it appears that even the Petitioners accepted that the said building cannot be repaired and needs to be redeveloped.

16. In the light of all the aforesaid facts, we must note what is recorded in the order of the Municipal Commissioner. He has noted the admission of the representative of the MHCC that the structure is in a dangerous condition. However, the contention of the MHCC was that the external facade should be retained while the internals of the building should be demolished. However, the representatives of the MHCC hastened to add that they could merely suggest this as a measure, but would not in any way guarantee that the facade would

not collapse and there would be no loss of human lives. The expert committee like MHCC, after making a request to maintain external facade had to concede that there was no guarantee that the facade would not collapse. What is submitted by the present Petitioners is also noted in the said order. Relevant part thereof reads thus:-

“The tenants of the building were represented by Advocate, Shri Makrand Narvekar and Advocate, Smt. Srushti Thakkar alongwith the tenants Mr.Aga, Mr. Sunil Mehta, Mr. Ashok Parekh, Mr. Ghansham Shewakramani, Mr. Bharat Choksey and Shri Shashank Shah. Their major concern was about the status of the tenants subsequent to the demolition of the building. On the matter of demolition, the tenants stated that they have in their possession a report by Mahimtura Consultants of 2006 on which they are relying. The tenants felt that the outside facade should be retained while the internals of the building could be demolished. The tenants also stated that they are ready to given an undertaking that they would be ready to stay inside at their own risk.

I have perused the letter of MHCC, the report of the TAC, the report of Veermata Jijabai Technological Institute (VJTI) which was also placed before Hon'ble High Court, report of the Mahimtura Consultants dated 29.09.2006 and have also seen photographs of the building. On perusal of all the reports, it is very clear that a reputed Institute like VJTI and its engineers have clearly stated that there is no option but to demolish the building. Further, the TAC having eminent and well qualified engineers of the Corporation, has also after visit and due study concluded that the complete building needs to be demolished. The MHCC and tenants, while agreeing on demolition of the internal of the building, have stated that the facade should be retained. However, I observed that the request of retaining the facade is neither supported by any technical study nor any technical person of repute is ready to take

responsibility for the technical viability of the facades remaining intact, in case the inside of building is demolished. There appears to be a clear fear that demolition of the internal of the building to which everyone agrees would endanger the support system of the facades which is then likely to collapse leading to loss of human lives.

In view of the above, it is imperative that immediate steps are taken to demolish the complete building including the facade. The demolition should be carried out under expert supervision and such barricading and measures be taken so that pedestrians lives are not endangered in the process of demolition. It is also necessary that with the assistance of the MHCC, the demolition team should salvage material of heritage value and keep it in safe custody so that the same could be used at the time of reconstruction."

(Underlines added)

17. What is noted by the Municipal Commissioner is that the major concern of the present Petitioners was about the status of the tenants subsequent to the demolition of the building. What was relied upon by the Petitioners was the report of the year 2006 of M/s. Mahimtura Consultants. Much water has flown thereafter. What we have reproduced above shows that even the Petitioners submitted that external facade should be retained while internals of the building should be demolished. At one more place, the Commissioner of the Municipal Corporation has recorded that the MHCC and the tenants while agreeing on demolition of the internals of the building stated that the facade should be retained. The Municipal Commissioner thereafter proceeded to observe that the request for retaining the facade is not supported by any technical study and moreover, no one is ready

to take responsibility for the technical viability of the facade remaining intact.

18. The Commissioner has perused the report of the TAC and the report of the VJTI. After considering all these aspects and the consent of the Petitioners and the MHCC for demolition of the entire building save and except the external facade that he directed demolition of the building while ensuring that material of heritage value should be salvaged with the assistance of the MHCC. Thus, admitted position as reflected from what is stated by the Petitioners in their correspondence made from the year 2008 and before this Court on 14th July 2014 is that the building is not repairable and it needs to be pulled down. The VJTI has warned the Municipal Corporation about the danger posed by the building to the pedestrians.

19. Now we turn to the report of the TAC. The TAC consisted of the chief Engineer, the Chief Engineer (D.P), the Chief Engineer (B.M.) and the Director (E.S.&P) who are the senior municipal officers having technical qualifications. The TAC conclusion needs to be reproduced which reads thus:

“TAC Conclusion:-

The site was visited by TAC members on 29.04.2015 at 2.30 p.m. as per the directives given by

the Hon.M.C. The TAC members have gone up to 1st floor, however, on site visit it is observed that the staircase is collapsed and it was not possible to go even at 1st floor to inspect the entire structure from inside. The 3rd floor is already collapsed and even the roof is damaged and open from the top. The basement also seems to be in dilapidated condition though could not be inspected from inside. It is also observed that the scrap materials are dumped in the basement which is hazardous from hygienic point of view to the adjoining residents. It is observed that the structure has been heavily propped with the steel struts/props.

During the site visit, it is also observed that the North West Corner of the Building has given away and may collapse suddenly without giving any warning. The Outer facade in UCR Masonry has developed vertical cracks at many locations and excessive vegetation growth is seen on all sides. The structure seems to be in abandoned state since last many years and with the removal of the top roof it has undergone heavy distress due to exposure to weather.

Considering the above, TAC opined that the Committee concurs with the opinion given by VJTI that the structure is beyond repairable measures and needs to be demolished. During the meeting Ward Executive Engineer has also opined that the building is deteriorated and the same needs to be reconstructed.

Under the circumstances, all the Committee members were unanimous about the fact that the structure under reference is not fit for human habitation and the same needs to be demolished, as the same is beyond repairs by following due process of law under the supervision of Structural Consultants.”
(Underlines added)

20. Thus, the TAC has recorded the present status of the building. We must note here that the present Petition was amended after the TAC report and the order dated 5th May 2015 was passed by the Municipal Commissioner and detailed averments were incorporated

from pages 26-A to 26-I of the Petition. The factual statements recorded by the Municipal Commissioner in the order dated 5th August 2015 have not been disputed in the amended Petition. The factual condition of the building which is noted by the TAC in its conclusion is also not seriously disputed. We must note here that the four experts of the Municipal Corporation have specifically concurred with the opinion given by the VJTI that the structure is beyond repairable measures and it needs to be demolished.

21. The objections to the report of the TAC by the Petitioners are two-fold. The first objection is that the TAC has not carried out the tests which are required to be carried out as incorporated under the judgment and order dated 23rd June 2014 and the second objection is that the members of the TAC have not inspected the entire building. As far as the second objection is concerned, from the condition of the building which is noted in the conclusions recorded in the report, it is difficult to find fault with the members of the TAC not inspecting the entire building.

22. We have carefully perused the judgment and order dated 23rd June 2014. The said judgment and order is rendered in a Petition filed by the Municipal Corporation. It appears that the said Petition was filed by the Municipal Corporation as it was facing several difficulties in

the way of implementing the notices under Section 354 of the said Act of 1888. The difficulties were that the tenants and the occupants were not co-operating for demolition of dilapidated buildings. The police were not extending the help. The contention of the Municipal Corporation was that some guidelines were necessary to be issued to avoid any untoward incident of loss of human lives of the occupants of the said buildings and the occupants of the adjoining structures and passers-by, as recorded in the Paragraph 2 of the said judgment and order. This Court noted the need to take action on the basis of the notices under Section 354 of the said Act of 1888 and in Paragraph 8 of the said judgment and order, this Court noted thus:-

“According to the Municipal Corporation of Greater Mumbai in view of the difficulties faced by them in implementation of such notices under Section 354 of the said Act in the absence of any specific provisions in the said Act for removal/evacuation of occupants of dilapidated buildings, and to make it effective and workable, considering the human problems, it is necessary to issue certain guidelines. It is the case of the Corporation that there is no proper response from the police and the Corporation officers are not in a position to enforce the notices under Section 354 of the said Act.”

23. Thus, this Court has proceeded to issue guidelines. The learned senior counsel appearing for the Mumbai Municipal Corporation was right to a great extent when he urged that the said guidelines cannot be read as if they are the provisions of a statute. The

guidelines lay down the procedure which is normally required to be followed by the Municipal Corporation in case of dangerous buildings classified in the Category C-1. The guidelines deal with the situation when there is a conflict between the experts on the issue of structural stability of a building. It is true that so long as the said judgment and order is final, normally, the Municipal Corporation will have to be implement the said guidelines. But as stated earlier, the said guidelines cannot be read as if the same are the provisions of a statute. In few cases, there will be emergent situations or extra ordinary situations where there may not be sufficient time available for the Municipal Corporation to take the action of referring the case to TAC. Therefore, in such cases, it is not possible to take a view that the Municipal Corporation cannot make a departure from the guidelines.

24. Now referring to the Clause (d) of Paragraph 9 of the said judgment and order which provides that the TAC shall undertake various tests as specified therein. There is some merit in the contention of the Municipal Corporation that the tests laid down therein appear to be in relation to the RCC structures and not in relation to load-bearing structures. Nevertheless, so long as the said judgment and order of this Court holds the field, if the TAC is not able to carry out the tests laid down therein, the TAC will have to give reasons as to why the tests could not be conducted. A report of the TAC will not become per se

illegal if the clause (b) of Paragraph 9 is not fully complied with. It will ultimately depend on the facts and circumstances of each case. What is material is whether the members of the TAC have applied their mind and whether the process adopted by the TAC is legal and proper. In the present case, though the reasons may not be specifically assigned by the TAC, but it appears that as the structure of the building which is constructed in the year 1908 is not a RCC structure, the tests laid down could not be conducted. The Petitioners have relied upon very old structural assessment reports of the year 2006.

25. Apart from the opinion of VJTI and TAC, this is a case where even the Petitioners have repeatedly agreed that the building cannot be repaired and needs to be pulled down. No technical opinion was produced either before the Municipal Commissioner nor before this Court which records that while maintaining the outside facade, internals of the building could be safely pulled down. In this case, apart from the acceptance by the Petitioners that the building needs to be demolished, there is a report of the VJTI which was considered by the Municipal Commissioner. We have already referred to the earlier order of this Court which notes that only the MHCC is coming in the way of demolition and the development of the building. Before the Municipal Corporation, the MHCC came out with a case that only the facade needs to be maintained. The representative of the MHCC has hastened to add

that he is not able to guarantee that the facade would not collapse. Taking an overall view of the matter, and considering all the subsequent events, the ultimate decision of the Municipal Commissioner that the building needs to be immediately pulled down will have to be upheld.

26. Now we turn to the second limb of the submissions made by the learned counsel appearing for the Petitioners. As far as the right of the occupants in such a situation is concerned, the law is now well settled in the case of *Shaha Ratansi Khimji and Sons*. The First Respondent LIC is an agency and instrumentality of the State. We must record our disapproval to the approach adopted by the First Respondent LIC before us. When the Petition was heard before this Court earlier, we had repeatedly called upon the learned counsel for the First Respondent LIC to make a statement whether in the event of the First Respondent LIC redeveloping the property, the tenants would be accommodated. However, no reply is forthcoming notwithstanding the grant of time. Today, an attempt is made by the learned counsel for the First Respondent LIC to contend that the lease will not be renewed. The bar under Section 91 of the said Act of 1888 was pressed into service.

27. We are constrained to observe that the stand which is taken today by the LIC is far from being fair. Several orders of this Court will

show that the First Respondent LIC was intending to redevelop the property. In fact, the order dated 8th April 2014 which we have quoted above records a statement of the learned senior counsel appearing for the First Respondent LIC that an Application is already made to the State Government for renewal of the lease. In fact, a direction was solicited from this Court against the Municipal Corporation directing disposal of the Application made by the LIC. We have noted the order dated 14th July 2014 which records that no one including the First Respondent LIC is opposing the demolition and development of the property.

28. The First Respondent LIC is the owner of the said building. The First Respondent LIC cannot be altogether exonerated from the responsibility of the present structural status of the building. We, therefore, expected the First Respondent LIC to make a fair statement before the Court considering the law laid down by the Apex Court that an endeavour shall be made to accommodate all the lawful tenants.

29. We must also note here that to the affidavit in support of the Notice of Motion No.616 of 2010, a letter dated 16th January 2009 addressed by the Regional Manager (Estate) of the First Respondent LIC to all the authorized tenants of the said building has been annexed. In the said letter, there is an assurance given by the LIC that the renewal of

lease for the ground with the local authorities will be completed at the earliest. There is an assurance that the authorized tenants will be given premises on lease after redevelopment. Therefore, the stand taken during the course of hearing before this Court becomes more curious. We fail to understand as to how there is a sudden shift in the stand taken by the First Respondent LIC.

30. Therefore, though we are not entertaining the Petition and we are dismissing the same, we propose to direct the Mumbai Municipal Corporation not to consider any Application made by any party for grant of development permission in respect of the plot on which the said building is situated without issuing a prior notice to the Petitioners. Before any such Application for grant of development permission is considered on merits, the Municipal Corporation will have to sufficiently give advance notice to the Petitioners to enable the Petitioners to raise objections and to enforce their rights.

31. At this stage, the learned counsel appearing for the Petitioners states that those occupants who are having their movables inside the building may be granted two weeks' time to remove their movables. We accede to the request made by the learned counsel for the Petitioners and direct the Mumbai Municipal Corporation to grant time to the occupants of a period period of two weeks to remove their

movables. Needless to add that for removing their movables, the occupants shall enter the building at their own risk.

32. We, accordingly, pass the following order:

ORDER :

- (a) The Writ Petition is dismissed. The Rule is discharged;
- (b) We direct the Mumbai Municipal Corporation that in the event any Application is made by any person for grant of any development permission in relation to the plot on which the said building is standing, before the said Application is considered on merits, 15 days advance notices thereof in writing shall be given to the Petitioners to enable the Petitioners to raise appropriate objections and to take all lawful steps for enforcing their rights;
- (c) The pending Chamber Summons Nos.58 of 2014 and 180 of 2015 and the Notice of Motion Nos.563 of 2010, 616 of 2010 and 694 of 2010 stand disposed of in the light of this judgment.