

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION STAMP NO.2330 OF 2015

Geeta Tenants Welfare Association. .. Petitioner
Vs
Municipal Corporation of Greater Mumbai
and Others. .. Respondents
—
Shri Anil R. Mishra for the Petitioner.
Mrs. Shobha Ajitkumar for the Respondent No.1-BMC.
Shri M.K. Tanna i/by Shri P.M. Shah for the Respondent No.2-landlord.
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CORAM : A.S. OKA &
REVATI MOHITE DERE, JJ
DATED : 7TH AUGUST 2015

PC.

. Not on board. Taken on board.

2. The challenge in this Petition under Article 226 of the Constitution of India is to the notice issued under Section 354 of the Mumbai Municipal Corporation Act, 1888 as well as the subsequent eviction notice.

3. The learned counsel appearing for the Mumbai Municipal Corporation on instructions accepts that in view of the law laid down by this Court by the judgment and order dated 23rd June 2014 in Writ Petition No.1135 of 2014, the Municipal Corporation cannot demolish the building without making a reference to Technical Advisory

Committee (TAC). The learned counsel appearing for the Municipal Corporation makes a statement that without receipt of the report of the TAC, the building will not be demolished. However, she submits that a direction be issued that the members of the Petitioner will occupy the building at their own risk. The contention of the second Respondent appears to be that the building is in a dilapidated condition. Even the learned counsel for the Municipal Corporation states that the building is already classified as "C-1 Structure".

4. Thus, the disputed questions of fact arise as regards the structural status of the building. The bar under Section 515A of the Mumbai Municipal Corporations Act, 1888 will not be applicable when a suit is filed for challenging the notice issued under Section 354 of the said Act of 1888.

5. It will be appropriate if the parties are relegated to a remedy of civil suit. Accordingly, we dispose of the Petition by granting liberty to the Petitioner to file a Civil Suit. To enable the Petitioner to file a Civil Suit and to move appropriate Court, the Respondents shall not act upon the notice issued under Section 354 of the said Act of 1888 for a period of 10 days from today.