

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

**APPEAL FROM ORDER NO.413 OF 2016
ALONG WITH
CIVIL APPLICATION NO.541 OF 2016**

Shantilal Mehta

since deceased through his Lrs

Nitin Navinchandra Mehta and ors.

: Appellants/Applicants.

Versus

The Municipal Commissioner,

Municipal Corporation of Greater Mumbai

and ors.

: Respondents.

Mr. D S Jain for the Appellants/Applicants.

Mrs. M R Bhoir for the Respondent.

Mr. Kalpesh Joshi i/by Kalpesh Joshi Associates for the Respondent No.5.

CORAM : R. M. SAVANT, J.

DATE : 09th June 2016

P.C.

1 The order dated 30/12/2015 passed by the Trial Court i.e. the learned Judge of the City Civil Court, Greater Mumbai is taken exception to by way of the above Appeal from Order. By the said order the Trial Court has recorded and accepted the statement made on behalf of the Mumbai Municipal Corporation for Greater Mumbai (for short "MCGM) who is the Defendant No.1, by Shri Kuber Shinde, Junior Engineer attached to P/North Ward, that the Defendant No.1 shall not proceed to take steps for evacuation and demolition without following the directions of the Division Bench of this court as contained in paragraph 9 clause (d) of its judgment dated 23/06/2014 in Writ Petition No.1135 of 2014. The Trial Court thereafter has observed that

the Defendant Nos. 1 to 3 shall file the report about the survey of the building on the next date and communicate the said report to the Plaintiff and before expiry of 48 hours of such communication no coercive steps for evacuation will be taken. The Trial Court has also adverted to the Writ Petition filed by the Defendant No.5 i.e. the landlord being Writ Petition No.2811 of 2014 in which Writ Petition amongst the reliefs sought by the Defendant No.5 is the relief that he should not be held responsible if the building collapsed and if any loss to life and property occurs. The Notice of Motion filed by the Appellants/Plaintiffs was thereafter adjourned to 16/01/2016 for facilitating the report to be submitted to the Trial Court. However, it seems that the report as yet has not been submitted by the Defendant No.1 i.e. the MCGM.

2 The learned counsel appearing on behalf of the MCGM Mrs. Bhoir is not in a position to make a statement one way or the other. However, considering the fact that the statement was recorded as long back as in December 2015, the Defendant No.1 MCGM is directed to submit the report expeditiously and not later than four weeks from date.

3 It was sought to be contended on behalf of the Appellants that they have various objections in respect of the report submitted by the Technical Advisory Committee (TAC) which have not taken into consideration by the Trial Court. In so far as the said aspect is concerned, the Trial Court has

recorded in the said order that it has not gone into the said reasons which were sought to be urged on behalf of the Appellants. This was probably in view of the fact that the procedure as contemplated in the order dated 23/06/2014 passed in Writ Petition No.1135/2014 was not completed.

4 Be that as it may, it is clarified that as and when the report is submitted by the Defendant No.1 i.e. the MCGM and the Trial Court takes up the Notice of Motion for further hearing, the parties would be entitled to urge their contentions in respect of the report of the Technical Advisory Committee (TAC). It is not necessary therefore to keep the above Appeal from Order pending, though the Trial Court has observed that no steps for evacuation should be taken before expiry of 48 hours of notice being served on the Appellants, it is directed that the said 48 hours notice should be proper notice given by the Defendant No.1 i.e. MCGM to the Appellants so that they have sufficient time to take appropriate steps. With the aforesaid observations, the above Appeal from Order is disposed of. In view of the disposal of the above Appeal from Order, Civil Application No.541 of 2016 does not survive and the same to accordingly stand disposed of as such.

[R.M.SAVANT, J]