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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1548 OF 2016

Rita Papace Co-op. Housing Society Ltd.

...Petitioner

Vs.

BMC & Ors.

...Respondents

Mr. A.G. Damle, Sr. Advocate a/w. Mr. Atul Singh, Advocate
for the Petitioner

Mrs. Shobha Ajitkumar, Advocate for BMC Respondent No.1

Ms. Uma Palsuledesai, AGP for the State Respondent No.2

CORAM : SHANTANU S. KEMKAR &

M.S. KARNIK, JJ.

DATED : 18TH JULY, 2016

PC. :

Parties through their Counsel. The grievance of the Petitioner is that the Corporation relying on the Technical Advisory Committee (TAC) report dated 29th September, 2014 issued the impugned notice of demolition of the Petitioner's structure. It is further grievance of the Petitioner that recently on 22nd June, 2016 and 5th July, 2016 the Corporation has reiterated its earlier notice and is proceeding to demolish the Petitioner's structure. It is submitted that the TAC before submitting the impugned report has not complied

with the directions contained in paragraph 9(d) 1 and 2 of the order passed by the Division Bench of this Court in **WPL. No. 1135 of 2014 *Municipal Corporation of Greater Mumbai Vs. State of Maharashtra & Ors* by the Division Bench of this Court (Coram: ANOOP V. MOHTA and A.A. Sayed, JJ decided on 23rd June, 2014.**

2. On the other hand the learned Counsel appearing for the BMC has supported the impugned decision of the TAC. She submits that after considering the three reports which were in favour of the Petitioner and the 4th report which was against the Petitioner the TAC recorded the finding that the structure is not repairable and being in dangerous condition needs to be demolished.

3. Having considered the submissions made by the learned Counsel for the parties and having gone through the impugned report of the TAC we find that the TAC has not complied with the directions contained in the WPL. No.1135 of 2014 passed by the Division Bench of this Court (**Supra**).

While taking the decision the TAC has neither complied with clauses 9(d) (i) and 9(d) (ii) nor has recorded the finding to the effect that the compliance to that effect is not necessary. In the circumstances we have no option, but to quash the impugned report of the TAC and remand the matter to the TAC for taking fresh decision in regard to the Petitioner's structure keeping in view the directions contained in the order dated 23rd June, 2014 passed by the Division Bench of this Court(**supra**).

4. The notices issued by the Corporation under Section 354 of the Mumbai Municipal Corporation Act shall remain in abeyance till the Fresh decision is taken by the TAC and will be subject to the said decision. TAC to decide the matter as expeditiously as possible preferably within 2 months from the date of receipt of the copy of this order.

5. The Petitioner and all occupants of the structure in question to submit the undertaking that they will be residing in the structure at their own risk and in the case of falling of

the building the Respondents shall not be held liable for any civil and criminal action. The undertaking be filed within a week from today by all the occupants.

6. The decision as may be taken by the TAC be informed by the Corporation to the Petitioner. If the decision taken by the TAC is adverse to the Petitioner, the same shall not be given effect to for two weeks enabling them to avail appropriate remedy against it in accordance with law. The undertaking so given shall remain operative till the decision of the TAC and two weeks thereafter.

7. The Petition is disposed of accordingly. Parties to act on the authenticated copy of this order.

(M.S. KARNIK, J.)

(SHANTANU S. KEMKAR, J.)