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

WRIT PETITION NO. 2965 OF 2014

MAULI BHARAT UDYOG NAGAR WELFARE
ASSOCIATION AND 2 ORS.

...Petitioners

V/S

MUNICIPAL CORP. OF GREATER MUMBAI AND 2 ORS. ...Respondents

Mr. Sanjay Jain a/w. Ms. Sarika Mehra

i/b. L.J. Law, Advocates for the Petitioners

Ms. Geeta Joglekar, Advocate for BMC, Respondent Nos. 1 & 2

Mr. Omkar Kulkarni, Advocate for Respondent No.3

CORAM : SHANTANU S. KEMKAR &

M.S. KARNIK, JJ.

DATED : 28TH JUNE, 2016

PC. :

Parties through their Counsel. By filing this Petition the Petitioners have challenged the order dated 27th August, 2014 passed by the Deputy Municipal Commissioner (Zone-IV) of Mumbai Municipal Corporation.

2. The grievance of the Petitioner is that this Court in the earlier round of litigation after considering the reports submitted by the parties including the TAC report vide order dated 18th July, 2014 in

WP(L).No. 1806/2014 passed following order:

“2. The Petitioners have challenged impugned order dated 3 July, 2014 passed by the Deputy Municipal Commissioner, Zone-IV whereby, rejected the Petitioner-tenant Association's Application for necessary permission for major structural repairs of the building known as “Mauli Bharat Udyog Nagar”, situated at Goregaon(East),

3. After going through the orders, as well as, after hearing the learned Counsel appearing for the parties, it is clear that the Deputy Municipal Commissioner has passed order based upon TAC report dated 21 May 2014. This Court, by order dated 23 May 2014, after considering the Petitioner's submission directed the Deputy Municipal Commissioner to give hearing to both the parties and to pass reasoned order by giving opportunity to all the parties, including to produce requisite documents and evidence.

4. It is relevant to note that while passing the order, this Court has already noted that there are conflicting structural reports on record. The Deputy Municipal Commissioner, however, based upon the TAC report came to the conclusion so recorded above which, in our view, ought not to have been done as a fresh TAC report is necessary for considering such

Applications.

5. We have also noted that the TAC report, so read and referred, is not prepared by following the procedure as we have recorded in our order in Writ Petition (L) No. 1135 of 2014 (Municipal Corporation of greater Mumbai Vs. State of Maharashtra & Ors.) passed on 23 June 2014, basically paragraph Nos. “9-c” and “9-d (I) and “9-d(ii)”. It appears that the report is prepared as per the site observations, therefore, the conclusion so drawn, in our view, just cannot be accepted, basically without independent analysis of TAC.

6. In view of above, we are inclined to pass the following order:

ORDER

a) Impugned order dated 3 July 2014 is quashed and set aside.

b) The matter is remanded back for re-consideration before the Deputy Municipal Commissioner.

c) We direct the TAC to submit a fresh report, as per the procedure so prescribed in the order passed by this Court in Writ Petition (L) No. 1135 of 2014 (supra) so recorded above, within 10 days from today to the Deputy Municipal Commissioner.

- d) *The Deputy Municipal Commissioner to consider the said report.*
- e) *The Deputy Municipal Commissioner, by giving an opportunity to all the parties, to pass appropriate order within two weeks thereafter.*
- f) *In the meantime, the Respondent-Corporation, the TAC and the respective parties to take safety measures to avoid any undue incidents, as the building is stated to be in dilapidated condition.*
- g) *In the meantime, the protection so granted by order dated 23 May 2014 to continue till the decision of the Deputy Municipal Commissioner and one week thereafter.*
- h) *The Petition is accordingly disposed of.*
- i) *There shall be no order as to costs”*

3. Thereafter in pursuance to the aforesaid directions of this Court a meeting of the TAC was held on 30th July, 2014. The decision of the TAC is at **Exhibit-KK** which reads thus:

“III. The Avg. depth of the Carbonation of the building is in the range of moderate to high.

Therefore M/s. Spectral Consultants concluded that “The Mauli Bharat Udyog building is repairable”/(pg at 79-87).

Since all the above tests were carried out in the presence of Jr. Engineer (Building dept.) P/South Ward, it not felt necessary to carry out again the separate test as per the guidelines mentioned in WP(L).No.1135 of 2014 at point No.9(d)(ii).

Hence this Technical Advisory Committee (TAC) is confirm on their decision which is reproduced as under.

Considering the reports, photographs, distress mapping plan of the building and test results submitted by the consultants as taken on record and as per site observations; because of higher construction depth and probability of corrosion upto 90% therefore it is concluded by the Technical Advisory Committee. (TAC) that the building under reference needs to be evacuated immediately, barricaded properly and demolished as it is not fit for human habitation and to avoid any untoward incident.

Forwarded herewith for perusal for D.M.C. (Z-IV)”.

4. According to the learned Counsel for the Petitioner the TAC without following the directions issued by this Court in its correct perspective has brushed aside the directions of this Court by observing that since all the tests were carried out in the presence of the Junior Engineer (Building Department) South Zone it is not necessary to carryout again the separate test as per order passed in WP(L) No.1135/2014. Thus according to the learned Counsel for the Petitioner the TAC report is in clear defiance of the directions contained in the order dated 18th July, 2014 passed by this Court. He further submits that thereafter the Deputy Municipal Commissioner without considering the directions of this Court and without noticing that the TAC did not comply with the directions of this Court mechanically passed the order on 27th August, 2014 rejecting the Petitioner's contentions that the structure in question is repairable and need not to be demolished.

5. On the other hand learned Counsel for the BMC and learned Counsel for Respondent No.3 have supported the impugned decision of the TAC as also of the Deputy Commissioner.

6. Having considered the statements made by the learned Counsel and having gone through the order passed in the petition and the report of the TAC and also the order passed by this Court we find that the TAC has completely ignored the order passed by this Court. We find that this Court had very specifically observed as under :

“It appears that the report is prepared as per the site observations, therefore, the conclusion so drawn, in our view, just cannot be accepted, basically without independent analysis of TAC.”

7. The order further contains directions to the TAC to submit a fresh report as per the procedure prescribed in the order passed by this Court in WP(L).No.1135/2014. Ignoring the specific directions the TAC has taken a decision which has been approved by the Deputy Commissioner without any application of mind. In the circumstances we have no option, but to set aside the same and remit the matter back to the TAC for taking a fresh decision keeping in view the directions contained in the order dated 18th July, 2014 in WP(L). No.1806/2014. While taking the fresh decision as

aforesaid the TAC shall consider further report obtained by the Petitioner on 15th August, 2014 from VJTI. Let a fresh decision as aforesaid be taken by the TAC and its report be submitted by the TAC to the Deputy Commissioner and the Deputy Commissioner shall pass appropriate orders on it as expeditiously as possible, but not later than 15 days from the date of receipt of copy of this order.

8. In the meanwhile the Petitioners are permitted to carry out safety measures in presence of the Officers of the Corporation.

9. The undertaking given by the Petitioner in terms of the interim order dated 4th September, 2014 passed in this Petition shall continue till the fresh decision is taken by the Deputy Commissioner of Municipal Corporation.

10. The Writ Petition is accordingly disposed of.

(M.S. KARNIK, J.)

(SHANTANU S. KEMKAR, J.)