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

WRIT PETITION NO. 2276 OF 2015

Shree Dipty C.H.S. Ltd.

...Petitioner

Vs.

Municipal Corporation of
Gr. Mumbai & Ors.

...Respondents

Mr. J.N. Jayale, Advocate for the Petitioner

Ms. Geeta Joglekar, Advocate for BMC, Respondent Nos. 1 to 3

Mr. V.S. Upadhyaya, AGP for Respondent No.4

CORAM : SHANTANU S. KEMKAR &

M.S. KARNIK, JJ.

DATED : 30TH JUNE, 2016

ORDER (PER JUSTICE SHANTANU S. KEMKAR):

With the consent of the parties heard finally.

2. By filing this Petition under Article 226 of the Constitution of India the Petitioner has challenged the notice dated 13th May, 2014 **Exhibit-P** by which Brihanmumbai Mahanagarpalika has directed the Petitioner to vacate the building in question immediately as the same is required to be

pulled down being in ruinous and dilapidated condition.

3. The case of the Petitioner is that the Builder had obtained a structural report from M/s. Conpro Consultant Pvt. Ltd. to the effect that the building is in dilapidated condition whereas the Petitioner had obtained and submitted before the Corporation a report from the N.M. Consultants to show that the building though is in a bad condition, but is repairable.

4. The grievance of the Petitioner is that in pursuance to the directions issued by this Court on 31st July, 2014 while disposing of the earlier Writ Petition (L) No. 1933 of 2014 the matter was referred to the Technical Advisory Committee (TAC), but the TAC in its report dated 24th November, 2014 has not considered the report submitted by the Petitioner in its correct perspective has taken a decision holding that the Petitioner's building needs to be evacuated immediately and requires to be demolished as it is not fit for human habitation.

5. On the other hand learned Counsel for the Corporation

submits that the TAC has taken into consideration both the reports and as per the Summary Test results and the conclusions of both the structural audit reports the TAC after visual examination, photographs distress mapping plan of the building and the test results submitted by both the Consultants held that the building needs to be evacuated as the same is not fit for human habitation and is in a dilapidated condition.

6. Having considered the submissions made by learned Counsel for the parties and having gone through the TAC report dated 24th November, 2014 we find that the TAC has elaborately dealt with both the reports, one submitted by the Builder and the other submitted by the Petitioner. The TAC found that in the report submitted by the Petitioner it was mentioned that the test result shows the concrete is of doubtful quality. Following is the crux of the report submitted by the Petitioner:

“(B) From the Test results, M/s. N.M. Consultants appointed by Society has concluded that :

- 1) *The column of Gr. Floor are found to be with major damage and lost compressive strength of concrete with steel corrosion inside.*
- 2) *The received test results indicates major structural damage. The concrete quality found very poor which has affected the load carrying capacity of structural members. The overall condition of the building shows severe and major damages all around the building.*
- 3) *In addition proper support to be placed on immediate basis wherever necessary and to safeguard the structure.*
- 4) *Partial demolition requiring major structural repairs, which enhances 3-4 years life of structure”.*

7. Thus we find that even in the aforesaid report submitted by the Petitioner it was specifically observed that the overall condition of the building shows severe and major damages all around the building. The concrete quality is found very poor which has affected the load carrying capacity of structural members, the column of ground floor to be with major damage and lost compressive strength of concrete with steel corrosion inside, proper support to be placed immediately wherever necessary and to safeguard the

structure. It further reveals that the building requires partial demolition requiring major structural repairs, and the repair would enhance the life of the structure to merely 3 to 4 years.

8. Thus the TAC on the basis of the aforesaid report as also the one which was recommending for demolition has recorded the finding that the building is not repairable and it requires to be demolished. In the circumstances no fault could be found in TAC report. As a result in the absence of any perversity in the TAC report we find the decision of the Corporation to demolish the building to be perfectly justified. Accordingly the Petition deserves to be and is hereby dismissed.

9. As regards Petitioner's prayer to grant some time to vacate the building, in view of the fact that this Court vide order dated 24th December, 2014 granted interim protection to the Petitioner on submitting undertaking and that undertaking has been filed, we are inclined to grant 4 weeks time to the Petitioner to vacate the premises. The undertaking

given by the Petitioner shall remain operative till the
Petitioner vacates the premises as aforesaid.

(M.S. KARNIK, J.)

(SHANTANU S. KEMKAR, J.)