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

WRIT PETITION NO. 771 OF 2015

Jayashree C. Kabali & Ors.

...Petitioners

Vs.

Assistant Engineer (Building &
Factory) N -Ward, Ghatkopar (E)

...Respondents

Mr. Karl Tamboli a/w. Mr. J. Rathod

i/b. Mr. Dhiren Shah, Advocates for the Petitioners

Mr. U.S. Upadhyay, AGP for the State

Ms. K.H. Mastakar, Advocate for the BMC, Respondents

CORAM : SHANTANU S. KEMKAR &

M.S. KARNIK, JJ.

DATED : 12TH JULY, 2016

P.C. :

Parties through their Counsel. With consent heard
finally.

2. By filing this Petition the Petitioners have challenged the notice dated 4th December, 2014 **Exhibit-A** issued under Section 354 of the Mumbai Municipal Corporation Act by the Municipal Corporation stating therein that as the building in question is in ruinous condition and is likely to fall and

dangerous to any person occupying, residing in to or passing by the same it requires to be pulled down. Learned Counsel for the Petitioners submits that the said notice has been issued at the instance of the other co-owner of the building who is not residing there and no independent survey or inspection has been carried out by the Municipal Corporation. He submits that in fact the building is in good condition and it can be repaired and need not to be demolished. He placed reliance on the report dated 9th June 2015 from Kishore Bhoir Structural Engineer that the building is repairable and need not to be demolished.

3. On the other hand learned Counsel appearing for the Municipal Corporation contends that the report submitted by the other co-owner on the basis of a notice issued to him clearly indicates that the building requires to be pulled down as the same is in dangerous condition.

4. Having considered the statements made by the learned Counsel for the parties and having regard to the fact that

there are conflicting structural reports, one submitted by the Petitioners who also claim to be owner of the building and the other submitted by the other co-owner of the building on which the Corporation has placed reliance.

5. In the circumstances in view of the law laid down in the case of *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* in WP(L) No. 1135 of 2014 we are inclined to dispose of the Petition by directing the Municipal Corporation to refer the matter to Technical Advisory Committee (TAC) within 15 days from today. Thereafter the TAC shall comply with the directions contained in the said order passed by the Division Bench of this Court on 23rd June, 2014 and submit its report to the Municipal Corporation as expeditiously as possible.

6. In case the TAC report is adverse to the interest of the Petitioners the same shall not be acted by the Corporation for

a period of 15 days enabling the Petitioners to seek remedy in accordance with law. The undertaking given by the Petitioners shall remain in operation till the TAC report is received and for a period of 15 days thereafter. The Petition is disposed of.

7. The TAC report be served by the Corporation to the Petitioners as soon as the same is received.

(M.S. KARNIK, J.)

(SHANTANU S. KEMKAR, J.)