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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO. 6564 OF 2016**

**REKHA GULABRAI NARA  
VERSUS  
THE STATE OF MAHARASHTRA AND OTHERS**

...  
**Advocate for Petitioner : Mr. N.S. Deshmukh h/f Aashish Satpute**  
**AGP for Respondent Nos 4 and 5: Miss. P.V. Diggikar**  
**Advocate for Respondent No.2 :Mr.P.P. Dhorde h/f G.V. Wani**  
**Advocate for Respondent No.6,8 and 9:Mr.H.B. Patekar h/f P.R.**  
**Katneshwarkar**

...  
**CORAM : S.C.DHARMADHIKARI &**  
**MANGESH S. PATIL,JJ.**

**DATE : 30/06/2017**

**PER COURT :-**

1] In the light of the disputed questions of fact and purely discretionary duty being sought to be enforced by seeking a writ of mandamus, we are unable to accept the argument of Shri Deshmukh. He tried to persuade us and to the best of his ability that this Court can issue a writ to the Bhusawal Municipal Council so as to certify a building as unfit for human occupation. If it is unfit for human occupation and habitation, the Municipal Council is empowered by law to cause investigation and inquiry to be made. It is entirely the satisfaction of the Municipal Council about the construction at site, its nature and whether it is unfit for human habitation and occupation. We cannot in such matters and which is a field preserved entirely for the expert in the field, pass any order. That would mean this Court takes over all the functions and powers

so also duties of the Municipal Council. That is surely not permissible and in law. It is for the Municipal Council to take a informed, rational and appropriate decision. In the garb of seeking a writ to that Council the petitioner cannot resort to a short-cut, the writ of this Court cannot be utilized to get over and circumvent the law enacted for protecting and balancing rights of both owners/lessors and the lessees/tenants. Once the Maharashtra Rent Control Act, 1999 enacts a complete Code and empowers the landlords as well to bring proceedings and seek a decree of eviction after satisfying the Trial Court that there is indeed a threat to the occupant's life and property and a building being rendered unfit, should be pulled down for construction of a new house, then, that law cannot be over ridden and particularly in the facts and circumstances of this case.

2] Hence leaving open all remedies and available in law we dispose of this Writ Petition.

**(MANGESH S. PATIL,J.)**

**(S.C.DHARMADHIKARI,J.)**

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