

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (ST) NO. 3075 OF 2017

Nita N. Chheda and anr. .. Appellants
vs.
Brihanmumbai Municipal
Corporation and anr. .. Respondents

Mr. Uday P. Warunjikar a/w. Ms Ashwini for the Appellants.
Mr. A.Y. Sakhare, Sr. Advocate a/w. Ms M.M. More for the
Respondent-MCGM.
Ms Dr. Poornima Advani a/w. Mr. Om Prakash Jha i/b Law Point for
Respondent No.2.

CORAM : M. S. SONAK, J.
DATE : 8 FEBRUARY 2017.

P.C. :-

1] After the matter was argued for quiet some time, the appeal can be disposed of with the following order, which is agreed to by the appellants and respondent No.2. Learned counsel for respondent No.1, i.e., Municipal Corporation for Greater Mumbai (MCGM) has, however, stated that the MCGM will abide by the orders of the court, but the MCGM is not in a position to record any agreement on their part.

2] The order now agreed to by the appellants and respondent No.2 is to the following effect:

a] The matter shall be now referred to the Technical Advisory Committee (TAC) as contemplated in the order dated 23 June 2014 in Writ Petition (L) No. 1135 of 2014 to determine the issues with regard to the suit structure, that is the issues as to whether the suit structure is dilapidated and dangerous and other allied matters;

b] The TAC shall furnish its report as expeditiously as possible and in any case within a period of four weeks from today. The TAC is requested, amongst other matters, to consider the various reports already placed on record by the parties. Ultimately, it is for the TAC to form its independent opinion in this matter;

c] Such report shall thereafter be placed before the learned trial Judge taking up L.C. Suit No. 271 of 2017. Copies of the same to be furnished to all the parties. Learned trial Judge is then requested to hear the parties and dispose of the notice of motion taken out by the appellants, in accordance with law and on its own merits after giving due credence to the TAC report. Needless to add that all parties shall be heard before the notice of motion is disposed of. However, the notice of motion is directed to be disposed of as expeditiously as possible and in any case within a period of fifteen days from the date of submission of TAC report;

d] In case, any amounts are required to be paid in the TAC for deliberation by the TAC, then such amounts shall be initially paid by the appellants. However, it shall be for the learned trial Judge to make suitable orders in this regard finally;

e] All the parties shall cooperate in the matter of expeditious disposal of the notice of motion;

f] The appellants have already made a statement that they are not occupying the suit premises. Accordingly, it is directed that *status quo* shall be maintained until disposal of the notice

of motion. It is further made clear that such *status quo* is at the request of and at the risk of the appellants herein;

g] The impugned order stands modified in the aforesaid terms;

h] All contentions of all the parties are kept open;

i] The appeal is disposed of in the aforesaid terms; and

j] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

dinesh