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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.208 OF 2016**

Vijay Punjab Co-operative Housing Society Limited	... Petitioner
Vs.	
State of Maharashtra and Ors.	... Respondents

**WITH
WRIT PETITION (L) NO.1515 OF 2017**

Rajesh Thapar	... Petitioner
Vs.	
State of Maharashtra and Ors.	... Respondents

**WITH
WRIT PETITION NO.801 OF 2016**

Jai Durga Co-operative Housing Society Limited (Proposed)	... Petitioner
Vs.	
State of Maharashtra and Ors.	... Respondents

**WITH
WRIT PETITION NO.780 OF 2016**

Meher Co-operative Housing Society Limited	... Petitioner
Vs.	
State of Maharashtra and Ors.	... Respondents

**WITH
WRIT PETITION (L) NO.1443 OF 2017**

Prithvi Punjab Co-operative Housing Society Ltd. ... Petitioner

Vs.

State of Maharashtra and Ors. ... Respondents

WITH

WRIT PETITION (L) NO.1520 OF 2017

Prithvi Punjab Co-operative Housing Society Ltd. ... Petitioner

Vs.

State of Maharashtra and Ors. ... Respondents

WITH

WRIT PETITION (L) NO.1511 OF 2017

Prithvi Punjab Co-operative Housing Society Ltd. ... Petitioner

Vs.

State of Maharashtra and Ors. ... Respondents

WITH

WRIT PETITION (L) NO.1521 OF 2017

Prithvi Punjab Co-operative Housing Society Ltd. ... Petitioner

Vs.

State of Maharashtra and Ors. ... Respondents

WITH

WRIT PETITION (L) NO.1446 OF 2017

Prithvi Punjab Co-operative Housing Society Ltd. ... Petitioner

Vs.

State of Maharashtra and Ors. ... Respondents

WITH

WRIT PETITION (L) NO.1486 OF 2017

Kulwinder Singh

... Petitioner

Vs.

State of Maharashtra and Ors.

... Respondents

WITH

WRIT PETITION (L) NO.1454 OF 2017

Harmohiderlal Gyanchand Rath

... Petitioner

Vs.

State of Maharashtra and Ors.

... Respondents

Mr. A. S. Jondhale a/w Ms. Yashoda Jondhale I/b M/s. Jondhale & Co. for petitioners in all matters.

Mr. A.Y. Sakhare, Sr. Counsel a/w Ms. Geeta Joglekar & Mr. Sagar Patil for the Respondent No. 2 & 3 in WP/208/16.

Ms. Geeta Joglekar & Mr. Sagar Patil for the Respondent No. 2 & 3 in WP/208/16 for Respondent No. 2 & 3 in all matters except WP/208/16.

Ms. Uma PalsuleDesai, AGP for the Respondent No. 1 in WP/208/16.

Mr. Milind More, Addl. G.P for the Respondent No. 1 in WP/780/16.

Mr. Abhay Patki, Addl. G.P for the Respondent No. 1 in WP/801/16 & WPL/1443/17.

Mr. Mohit Jadhav, AGP for the Respondent No. 1 in WPL/1446/17.

Mr. M.A. Sayed, AGP for the Respondent No. 1 in WPL/1521/17.

Mr. Kedar Dighe, AGP for the Respondent No.1 in WPL/1454/17, WPL/1486/17.

Mr. U.S. Upadhyay, AGP for the Respondent No.1 in WPL/1511/17.

Mr. L.T. Satelkar, AGP for the Respondent No.1 in WPL/1515/17.

Mr. Rajiv Mane, AGP for the Respondent No.1 in WPL/1520/17.

**CORAM : A.S. OKA &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 26th JULY, 2017

PC.

1 These Petitions can be disposed of by a common judgment. These Petitions relate to Building Nos.1, 2, 3, 4, 5, 6, 7, 9, 11, 14 and 15 (for short “the said buildings”) in Guru Tegh Bahadur Nagar, Sion, Koliwada, Mumbai. Except Writ Petition (L) Nos.1515 of 2017, 1486 of 2017 and 1454 of 2017 which are filed by individuals, other Petitions have been preferred by Co-operative Housing Societies affirmed by the occupants of the building.

2 According to the case of the petitioners, the said buildings have been constructed by the State Government on the land vesting in the Government of India. According to the case of the petitioners, refugees from Pakistan were rehabilitated in the said buildings. The challenge in these Petitions under Article 226 of the Constitution of India is to the notices issued under Section 354 of the Mumbai Municipal Corporation Act, 1888 (for short “the said Act”). By the impugned notices, the said buildings have been declared as in dilapidated and ruinous condition and in fact the said buildings have been ordered to be demolished. The petitioners are relying upon the reports submitted by Shri Latesh S. Sanklecha, Consulting Structural Engineers in respect of the structural status of the said building subject matter of these Petitions. In reports submitted in May, 2017, Shri

Sanklecha has recorded a conclusion that the buildings in question cannot be categorized as 'C1' but the same will fall in category 'C2-D'. He has also submitted proforma B along with the reports on various tests such as ultrasonic pulse velocity test, rebound hammer test, half cell potential and carbonation tests conducted by an agency known as Capstone appointed by Shri Sanklecha. Reliance is placed by the petitioners on a decision of the Division Bench of this Court in the case of the *Municipal Corporation of Greater Mumbai Vs. State of Maharashtra and Ors.*¹, by contending that guidelines laid down by this Court have not been followed.

3 The learned counsel appearing for the second respondent – Mumbai Municipal Corporation, on instructions, states that in terms of the guidelines laid down by this Court in the aforesaid decision, now the cases of the buildings subject matter of these Petitions have been referred to Technical Advisory Committee.

4 In view of the law laid down by the Division Bench in the aforesaid decision, now action on the basis of the impugned notices cannot be taken till TAC submits its reports and the Competent Authority of the Municipal Corporation takes appropriate decision on the basis of the said reports. Needless to add that TAC will have to

1 (2014) 6 Bom. C.R. 860

comply with the directions contained in clause (d) of paragraph 9 of the aforesaid decision before forming any opinion. The learned counsel appearing for the Municipal Corporation states that normally TAC requires time of about two months to submit a report.

5 The occupants of the buildings have given undertakings as directed by ad-interim order of this Court. The said undertakings will have to continue till appropriate order is passed by the Competent Authority of the Municipal Corporation on the basis of the report of TAC.

6 The learned AGP states that the State Government has appointed two Committees which will consider the issues of redevelopment of the said buildings. However, the Committees have not submitted recommendations and therefore, the State Government has not taken any decision on this aspect.

7 We, accordingly dispose of these Petitions by passing the following order :-

ORDER

- (i) We direct TAC to submit a report in terms of the observations of this Court in this judgment within a

period of two months from today;

- (ii) After the report is submitted, the Municipal Corporation will place the matter before the Competent Authority which will take a decision whether the impugned notices can be implemented in the light of the opinion expressed by TAC. If the Competent Authority passes an order directing that in the light of TAC report, the impugned notices cannot be implemented, no action shall be taken on the basis of the impugned notices;
- (iii) If the Competent Authority passes an order directing the implementation of the impugned notices, the Municipal Corporation shall serve a copy of TAC report along with a copy of the decision taken by the Competent Authority to the petitioners. In such event, the petitioners will be entitled to file fresh Petitions for challenging the impugned notices, the report of the TAC and the order passed on the said report;
- (iv) The decision taken by the Competent Authority shall be communicated to the petitioners. Till the date of

communication of the decision to the petitioners, no action on the basis of the impugned notices shall be taken subject to condition of all the occupants of the buildings filing a fresh undertaking in terms of the order of this Court dated 7th June, 2017 within a period of four weeks from today stating that the undertakings filed earlier will continue to bind them till the date of communication of order passed by the Municipal Corporation to the petitioners. Such undertakings shall be filed within a period of one month from today failing which protection granted to the said buildings will come to an end;

- (v) In the event the order of the Competent Authority directs implementation of the impugned notices, the protection granted as above shall continue to operate for a period of three weeks from the date on which the order of the Competent Authority along with a copy of TAC report is supplied to the petitioners;
- (vi) We make it clear that we have made no adjudication on the structural status of the buildings in question and all issues are left open to be decided by TAC;

(vii) We direct that copies of the undertakings filed in terms of this order shall be furnished to the Advocate for the Municipal Corporation as well as to the office of the Government Pleader;

(viii) The Petitions are disposed of on above terms.

(SMT. VIBHA KANKANWADI, J)

(A.S. OKA, J)