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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2322 OF 2016**

Smt. Jyotiben K. Bharmani and Ors.	... Petitioners
Vs.	
Brihanmumbai Municipal Corporation and Ors.	... Respondents

Mr. Atul S. Singh for the Petitioners.
Ms. Vandana Mahadik for the Respondent No.1.
Ms. Himanshu Takka, AGP for the Respondent No.2.

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

DATE : 17th JULY, 2017

PC.

1 On the last date when the Petition was called out, it was noticed that the Advocate representing the third respondent was not present though the name of the Advocate representing the third respondent shown on the cause list. The learned counsel appearing for the petitioners has served a specific notice to the said Advocate on 6th July, 2017 informing that the Petition will be taken up today. We direct the Advocate for the petitioners to file on record an office copy of the said letter along with an affidavit.

2 Considering the narrow controversy involved in the Petition, the same deserves to be disposed of finally. The first prayer in this Petition under Article 226 of the Constitution of India is for issuing a writ of mandamus directing the Municipal Corporation to refer the case to the Technical Advisory Committee (TAC). It is pointed out by the petitioners who are claiming to be tenants of different tenements in the building subject matter of this Petition that a notice under Section 354 of the Mumbai Municipal Corporation Act, 1888 (for short “the said Act”) was issued on 15th June, 2015 directing that the building subject matter of this Petition should be pulled down as the same was in dilapidated condition. Considering the allegations made in the said notice, it is not in the interest of the third respondent – landlord to keep the Petition pending and that is the reason why we are taking up the Petition for final disposal.

3 The learned counsel appearing for the petitioners invited our attention to the Structural Inspection Report submitted by Shri Yogesh P. Patel, Architect - Structural Engineer appointed by the third respondent. The said report records that the condition of the building is quite bad and therefore, reconstruction or redevelopment was recommended. The petitioners are relying upon the report dated 29th December, 2015 of M/s. Total Solution, Architects and Structural

Engineers in which the opinion expressed is that the building can be repaired under the guidance of Structural Engineer.

4 Reliance is placed on the 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. The submission is that in view of the directions issued by this Court, an opinion of the Technical Advisory Committee will have to be sought on the structural status of the building. Our attention is invited to the directions contained in paragraph 9 of the said judgment and in particular clauses (c) and (d) of paragraph 9. In view of clause (c) of paragraph 9, the Mumbai Municipal Corporation ought to have referred the case to TAC. Unless TAC submits a report, further action under Section 354 of the said Act cannot be taken. The first respondent – Municipal Corporation is bound by the said decision which is rendered in the Petition filed by the Municipal Corporation itself.

5 Hence, we need not keep the Petition pending and the same is disposed of by passing the following order :-

ORDER

- (i) We direct the first respondent – Municipal Corporation to refer the case to Technical Advisory Committee. The

¹ (2014) 6 Bom. C.R. 860

Committee shall submit a report as expeditiously as possible and in any event within a period of two months from today;

(ii) After considering the report, the Appropriate Authority of the Mumbai Municipal Corporation shall take appropriate decision on the question of taking further steps on the basis of notice dated 15th June, 2015 under Section 354 of the said Act. The decision taken by the Appropriate Authority of the Mumbai Municipal Corporation on the basis of the report of the TAC along with a copy of the report shall be forwarded by the Municipal Corporation to the petitioners as well as to the third respondent. No further steps shall be taken on the basis of the notice under Section 354 of the said Act till the date of communication of the decision to the petitioners;

(iii) In the event, the Competent Authority of the Mumbai Municipal Corporation decides to implement the aforesaid notice dated 15th June, 2015, no action shall be taken on the basis of the notice dated 15th June, 2015

for a period of three weeks from the date on which a copy of the decision of the Municipal Corporation alongwith a copy of TAC report is served to the petitioners. In such event, the petitioners will be entitled to file a fresh Petition for challenging the notice dated 15th June, 2015, the report of the TAC and the decision taken by the Corporation;

(iv) We make it clear that we have made no adjudication on the issue of present structural status of the building in question and all issues are left open to be decided by TAC;

(v) The Petition is disposed of on above terms;

(SMT. VIBHA KANKANWADI, J)

(A.S. OKA, J)