

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1589 OF 2016

M/s. Aakash Projects & Infrastructures Pvt. Ltd. .. Petitioner

Vs

The Municipal Corporation of Greater Mumbai
and Others. .. Respondents

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Shri G.S.Godbole i/b Shri Anil R. Mishra for the Petitioner.

Mrs. Vandana Mahadik for the Respondent Nos.1 to 5.

Shri Vishal Kanade i/b Shri S.B. Amin for the Respondent No.6.

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

DATED : 23RD JUNE 2017

P.C.

1. Heard the learned counsel appearing for the parties. The Petitioner is the owner of a building more particularly described in Paragraph 3 of the Writ Petition. A notice under Section 354 of the Mumbai Municipal Corporation Act, 1888 (for short “the said Act”) was issued by the Mumbai Municipal Corporation on 12th December 2014 which proceeds on the footing that the building in question is in a dilapidated condition and is required to be pulled down. In view of the report submitted by the sixth Respondent expressing opinion as regards the structural status of the building, the case was referred to Technical Advisory Committee. The Technical Advisory Committee has come to a conclusion that the building is in good condition. However, parapet

walls are in dilapidated condition. Therefore, the TAC opined that the said structure is repairable, but toilet blocks, parapet walls and chajjas will have to be reconstructed. The Ward Executive Engineer, P/South issued a communication to the sixth Respondent as well as the Petitioner forwarding a copy of the TAC report and calling upon them to take steps for carrying out repairs.

2. The challenge in this Petition under Article 226 of the Constitution of India is to the report/opinion of the TAC. The learned counsel appearing for the sixth Respondent has produced for perusal of the Court a repair permission dated 18th February 2016 granted in the name of the said Respondent. The case made out by the sixth Respondent is that the repairs have been carried out in terms of the said permission.

3. The contention of the Petitioner is that the report of the TAC is erroneous on many grounds.

4. In view of the conflicting opinions reflected from the reports of the two Structural Consultants the regarding structural status of the building, the case was referred to TAC. Now, TAC has opined that it is not necessary to pull down the building and has recommended repairs. The case of the sixth Respondent is that on the basis of the

repair permission dated 18th February 2016, the repairs have been carried out.

5. The Petitioner is virtually seeking a declaration that the opinion of the TAC is erroneous. Therefore, for deciding the Petition, the disputed questions of fact regarding structural status of the building will have to be gone into. Evidence of the experts will have to be recorded.

6. According to us, all this can be appropriately done in a civil suit filed before a Civil Court. Therefore, we decline to entertain this Petition under Article 226 of the Constitution of India. The Petition is disposed of.

7. Remedy of the Petitioner of approaching the Civil Court is kept open. All contentions on merits are kept open.

(SMT.VIBHA KANKANWADI, J)

(A.S. OKA, J)