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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 812 OF 2017

Mr. Kassim Faizy and Others Petitioners.

V/s

The State of Maharashtra and Others Respondents.

Mr. Mihir Desai, Senior Counsel a/w Mr. Shashi D. Pandey for the
Petitioner.

Mr. Hemant Haryan, Asstt. Govt. Pleader for Respondent No.1 – State.

Ms. Vandana Mahadik for Respondent No. 2 – MCGM.

Mr. Satish Kamat for Respondent No.3.

Mr. J.S. Kini a/w Mr. Suresh Dubey for Respondent No.4.

**CORAM: B. R. GAVAI &
M.S. KARNIK, JJ.**

DATE: 11th September, 2017

P.C.:-

1] The Petitioners have approached this Court praying for quashing and setting aside the notice dated 15/12/2016 issued by the Corporation, stating therein that the building, of which the Petitioners are occupants, is in a dilapidated condition and not fit for human habitation and it is required to be demolished.

2] Mr. Desai, learned Senior Counsel appearing on behalf of the

Petitioners, submits that the Structural Auditor's Report which is submitted by the owner shows the building to be in a dilapidated condition, whereas the Structural Auditor's Report which is obtained by the Petitioners who are tenants, shows that the building to be in a reparable condition. He, therefore, submits that in view of the judgment of the Division Bench of this Court in Municipal Corporation of Greater Mumbai vs. State of Maharashtra and Ors dated 23/6/2014 passed in Writ Petition (L) No. 1135 of 2014 , it will be appropriate if the matter is referred to Technical Advisory Committee ("TAC")

3] Ordinarily, we would have considered the matter for being referred to TAC to find out which of the two reports is more reliable. However, Respondent No.4 has placed on record various photographs of the building. The same are taken on record and marked "X" for the purpose of identification. Perusal of the photographs itself would reveal that the building is in a dilapidated condition. We may take a judicial notice of the fact that recently, in Mumbai, two dilapidated buildings have been collapsed, resulting in loss of dozens of human lives.

4] In any case, Petitioners' right as tenants is protected by Respondent No.4. Respondent No.4 has filed an undertaking to that effect. It will be relevant to refer to the following part of the said undertaking:-

“3. I undertake to ensure that the tenancy rights in respect of the tenanted premises of the tenants in the suit building is not affected in any manner by the demolition of the suit building and that the tenants would be given permanent alternate accommodation on tenancy basis of an area equivalent to the area occupied by them as seen in the Municipal approved plan, subject to the tenants paying all the pending rents to me and complying with other terms of tenancy.”

The said undertaking is taken on record and marked “X-1” for identification. It could thus be clearly seen that Respondent No.4 has clearly undertaken that tenants would be given permanent alternative accommodation on tenancy basis of an area equivalent to the area occupied by them as can be seen from the municipal approved plans, subject to the tenants paying all the pending rents. Undertaking given by Respondent No.4 is treated as an Undertaking given to this Court and the same is accepted. Needless to state that the Undertaking would not only bind the Petitioners but also their successors in title. It is further made clear that, in the event, Respondent No.4 desires to create any third party rights, the Undertaking given hereinabove, shall be a part of the transaction entered into by him with any other third party.

5] In that view of the matter, we find that the Petitioners' interests are squarely protected. After demolition of the building, in the reconstructed building, Respondent No.4 will be bound to give to the Petitioners an area equivalent to the area occupied by them as an alternative permanent accommodation on tenancy basis.

6] We therefore do not find that any case is made out for interference in extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. With the above, observations, Petition stands rejected.

(M. S. KARNIK, J.)

(B. R. GAVAI, J.)