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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2098 OF 2014**

Mrs. Prafullaben K. Vora and Ors.	... Petitioners
Vs.	
Assistant Commissioner and Ors.	... Respondents

Mr. Vishal Kanade a/w Mr. Hitesh Solanki i/by Manoj & Ashok Associates for the Petitioners.

Mr. J. Carlos a/w Ms. Vandana Mahadik for the Respondent No.1.

Mr. Amit Shastri, AGP for Respondent No.2.

Ms. Madhura Deshmukh i/by Mr. S.S. Kulkarni for the Respondent Nos. 3 to 6.

Mr. Madhav J. Jamdar for the Respondent No.8.

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

DATE : 12th JULY, 2017

PC.

1 Heard the learned counsel appearing for the petitioners.

The learned counsel appearing for the eighth respondent states that he has no instructions in the matter. By this Petition under Article 226 of the Constitution of India, the challenge is to the notice dated 25th April, 2014 issued by the Mumbai Municipal Corporation under Section 354 of the Mumbai Municipal Corporation Act, 1888 (for short “the said Act”). By the said notice, the owner of the building was called upon to vacate and pull down the structure/building consisting of ground plus three floors.

2 There is a reply filed by Shri Jeevan D. Rathod, Assistant Engineer of the Mumbai Municipal Corporation which is dated 23rd June, 2014. In the said reply, reliance is placed on the Structural Audit Survey Report submitted by Shri B.J. Mehta, Architectural and Structural Consultants Private Limited which was submitted by the owner/ landlord. It is stated that considering the said Structural Audit Survey Report, a direction was issued to take action under Section 354 of the said Act on the basis of which the impugned notice was issued. In clause (g) of the said affidavit, Shri Rathod has stated thus:-

“(g) I say that since there are rival petitions filed by one tenants and other by the landlord/owners, it is suggested on behalf of MCGM that at the cost of the tenants and landlord/ owners a Structural Audit Survey Report from a Structural Auditor from the panel of these Respondents may be appointed to inspect and inform the Hon'ble Court about the factual position of the building. I say that based on the said report further course of action can be proceeded in accordance with law.”

3 By way of rejoinder, the petitioners have placed on record Structural Audit Report submitted by M/s. S.P. Consultants, Structural Engineers. The said report suggest that the building could be repaired.

4 Today, the learned counsel appearing for the Mumbai

Municipal Corporation has placed on record the communication dated 8th July, 2017 which records that office of the Assistant Engineer (B&F), F/S Ward F-1(I/C) has submitted a detailed report to the Deputy Municipal Commissioner, Zone – II and Additional Municipal Commissioner (C) on 2nd June, 2015 to remove the subject building from 'C-1' category. The said document is taken on record and marked 'X1' for identification. The learned counsel appearing for the Municipal Corporation states that final decision has not been taken on the basis of the said document.

5 The impugned notice proceeds on the footing that the building in question is covered by category 'C-1'. Now, a proposal for removing the said building from 'C-1' category is pending. It is obvious that pending the decision on the said proposal, no action can be taken on the basis of the impugned notice. We may note here that by an order dated 23rd July, 2014 a specific direction was issued by the Municipal Corporation to file affidavit stating whether the building in question falls in category 'C-1'. Perhaps this order was passed as the affidavit dated 23rd June, 2014 filed by Shri Jeevan D. Rathod did not specifically record that the building has been categorised as 'C-1'. In compliance with the order dated 23rd July, 2014 no further affidavit has been filed. Therefore, this Petition need not be kept pending and we pass the

following order :-

- (i) We direct the appropriate Authority of the Mumbai Municipal Corporation to take final decision on the proposal submitted by the Assistant Engineer for removing the said building from 'C-1' category as expeditiously as possible and in any event, within a period of six weeks from today. The decision taken shall be communicated to the petitioners and to the owners of the building;
- (ii) Needless to add that till the date of communication of the decision as aforesaid, no further action shall be taken on the basis of the impugned notice;
- (iii) If the Competent Authority of the Municipal Corporation decides to reject the proposal for removing the building from 'C-1' category, and if the Municipal Corporation decides to execute and implement the impugned notice, the same shall not be executed and implemented without issuing 15 days' advance notice in writing to the petitioners and to all concerned parties;
- (iv) In the event the Competent Authority decides not to remove the building from C-1 category, the petitioners

will be entitled to file a fresh petition for challenging the impugned notice;

(v) We make it clear that we have made no adjudication on the issue of structural status of the building and all contentions in that behalf are kept open;

(vi) The Petition is disposed of on above terms.

(SMT. VIBHA KANKANWADI, J)

(A.S. OKA, J)