

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

**WRIT PETITION NO.1871 OF 2015
WITH
CHAMBER SUMMONS NO.278 of 2015
WITH
CHAMBER SUMMONS NO.402 OF 2016**

Mr. Ratanshibhai Umersee Gala & Anr.

...Petitioners

Versus

The Municipal Corporation of Greater
Mumbai & Ors.

...Respondents

Mr. Ramanand R. Sharma and Mr. Surya S. Das for the Petitioners.

Mr. A.Y. Sakhare with Ms. Pallavi Thakar for the Respondent Nos.1 to 4.

Mr. Sunil Patel i/b. M/s. Sunil & Co. for the Respondent No.5.

Mr. Vikhil Dhoka with Ms. Anisha Singh i/b. M/s. Solicis Lex for the
Respondent Nos.6 to 12.

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

DATE : 30th JUNE, 2017

P.C.

1. Rule. The learned Counsel on record for the respondent nos.1 to 4 waives service. The learned Counsel on record for the respondent nos.6 to 12 waives service. The learned Counsel for the respondent no.5 waives service. Forthwith taken up for final disposal.

2. The petitioners, by this petition under Article 226 of the Constitution, have taken an exception to the notice dated 18th July

2014 issued by the first respondent/Municipal Corporation under Section 354 of the Mumbai Municipal Corporation Act, 1888 (for short the “said Act”), undated notice issued by the respondent no.1 (Exhibit J to the petition), notice dated 1st April 2015 (Exhibit R to the petition) issued by the respondent no.1 and the report of the Technical Advisory Committee (for short “TAC”) dated 29th June 2016.

3. The main submission of the learned Counsel for the petitioners is that the TAC has not complied with the directions issued by this Court in the case of **Municipal Corporation of Greater Mumbai v/s.State of Maharashtra and Ors. 2014(6) Bom CR 860** and in particular Clause (d) of paragraph 9 of the said judgment. He pointed out that the TAC has not conducted the tests which are required to be carried out as mentioned in clause (d) and the TAC has relied upon the reports submitted by the parties. He, would, therefore, submit that as the report of the TAC is vitiated, action under Section 354 of the said Act cannot be taken. The learned counsel appearing for the respondent nos.6 to 12 submitted that the present petition is a collusive petition between the petitioners and the respondent no.5. He submitted that, in fact, there were no conflicting reports of the Structural Consultants and there was no reason for seeking the opinion of the TAC. The learned Counsel opposed the petition by pointing out that notices under section 354 of the said Act are being issued right from the year 1999 and considering the present status of the building, which poses danger to the passers by, no interference is called for. The learned Senior Counsel appearing for the Municipal

Corporation submitted that the TAC does not have the machinery to carry out the tests as laid down in the aforesaid decision of this Court. He submitted that the TAC can always appoint an expert to conduct the tests which are required to be carried out and rely upon the report of the expert appointed by the Municipal Corporation. He also pointed out that there are no funds placed at the disposal of the TAC and, therefore, the TAC refers the matter to the Ward Officer who, in turn, appoints an expert as certain funds are available at the disposal of the ward office level.

4. We have given careful consideration to the submissions. In the affidavit-in-reply filed by the respondent no.1/Municipal Corporation of Shri N.S. Ranganekar, working as the designated officer-II, Assistant Engineer (B & F), P/South Ward, it is stated that the Municipal Corporation found that there was a conflict of opinions in the report of the Structural Consultants M/s. Avon Projects and the report of structural consultant filed by the owner. That is why the matter was referred to TAC on 26th September 2014. In fact, the affidavit refers to an order passed by the City Civil Court, Mumbai, in a suit filed by some of the occupants directing that action of demolition shall not be carried out till the report of the TAC was received.

5. None of the contested respondents have challenged the action of the Municipal Corporation of referring the case to the TAC. Therefore, the argument that the reference to the TAC was not necessary, cannot be considered at all.

6. At this stage, we make a reference to the directions issued by this Court in the case of Municipal Corporation of Greater Mumbai and in particular in clause (d) of paragraph 9. Clause (d) of paragraph 9 reads thus:-

“(d) The TAC shall:

i) Carry out a visual inspection of the state of the internal and external plaster, plumbing, drainage, whether the doors and windows close properly, whether steel in columns is exposed, whether there is settlement in the foundation, deflections/sagging, major cracks in columns/beams, seepages/leakages, staircase area and column condition, lift well walls, U.G. tank, O.H. tank column condition, parapet at terraces, chhajjas, common areas, terrace water proofing.

ii) Carry out specific tests like ultrasonic pulse velocity test, rebound hammer test, half cell potential test, carbonation depth test, core test, chemical analysis, cement aggregate ratio as may be considered by TAC as necessary.”

(Underline supplied)

7. What is required to be done by the TAC is laid down by this Court. The TAC is required to carry out specific tests as provided in sub-clause (ii) of clause (d) provided the TAC considers the said tests to be necessary. Apart from conducting tests, the requirement of carrying out inspection as provided in sub-clause (i) is laid down. Now, coming to the exercise undertaken by the TAC in the present case, we find that the TAC has taken into consideration the reports of M/s. Avon Projects (appointed by the tenants) and M/s. Conpro Consultant (appointed by the owner). The TAC has considered the results of rebound hammer test, ultrasonic pulse velocity test and carbonation test conducted by the two experts.

Thereafter, the TAC has quoted the conclusions drawn by the structural auditors in the two reports. On the third page of the report, there is a cryptic conclusion recorded by the TAC that the tests as contemplated by sub-clause (ii) of clause (d) are not necessary.

8. Assuming that the TAC does not have its own establishment to carry out the tests as laid down by this Court and assuming that no funds are placed at the disposal of the TAC, surely the TAC cannot rely upon the conflicting reports submitted by the contesting parties for recording its opinion. The object of referring such cases to the TAC is that as there is a conflict of views expressed by two sets of experts, an independent assessment as regards structural status of the building is necessary. While doing the exercise, the TAC cannot rely upon the conclusions drawn by one of the two conflicting reports. The conclusions drawn in the conflicting reports are to be tested by TAC by conducting various tests whenever required and by conducting visual inspection as provided in the judgment of this Court. If the TAC lacks expertise to conduct the tests, it can always appoint its own expert to conduct the tests and to submit a report. There is nothing wrong if the TAC appoints an independent expert and after satisfying itself that the expert has conducted the tests properly, relies upon the report of the expert appointed by it.

9. In the present case, the report of the TAC is a mere reproduction of the two conflicting reports of the structural consultants. Therefore, the TAC has not done its duty as contemplated by the decision of this Court.

10. Now as regards the expenditure for appointing an expert by the TAC, firstly, the direction issued by this Court in the petition filed by the Municipal Corporation itself does not empower the Municipal Corporation to call upon one of the contesting parties to pay the remuneration and charges of the expert. Therefore, no such direction can be issued so long as the directions issued by this Court in the aforesaid decision are not modified. If there is any other statutory provision under which the Municipal Corporation can demand expenses from the parties, the Municipal Corporation can always exercise the said powers.

11. Suffice it to say that as TAC has not done its job in accordance with law, the impugned notice under Section 354 of the said Act cannot be implemented. Therefore, we propose to direct TAC to undertake the exercise as provided in the aforesaid decision of this Court.

12. Hence, we dispose of the petition by passing the following order:-

ORDER

- (i) We hold that the report of TAC submitted in March 2013 (Exhibit – X to the petition) is illegal and cannot be relied upon;
- (ii) We direct TAC to undertake a fresh exercise as per the directions contained in clause (d) of paragraph 9 of the decision of this Court in the case of the Municipal Corporation of Greater Mumbai (supra);

(iii) As observed in the judgment, if TAC does not have the resources to carry out tests contemplated by sub-clause (ii) of clause (d), TAC can always appoint an independent structural consultant for carrying out various tests;

(iv) In the light of the observations made in the judgment, TAC shall complete the exercise as expeditiously as possible and preferably within a period of two months from today and submit a report to the appropriate authority of the Municipal Corporation of Greater Mumbai;

(v) If the appropriate authority empowered to act under section 354 of the said Act comes to the conclusion that in the light of the fresh report of the TAC, the notices under section 354 of the said Act which are impugned in this petition are required to be enforced, the appropriate authority of the Municipal Corporation shall serve an advance notice of at least 15 days to all concerned, including the parties to the petition along with copies of the report submitted by the TAC;

(vi) The issue whether the Municipal Corporation is empowered to recover expenditure incurred by the TAC from the contesting parties is left open;

(vii) If the Municipal Corporation has a statutory power to recover the expenditure, it can always exercise the said statutory powers in accordance with law;

(viii) We make it clear that we have made no adjudication on the structural status of the building in question;

(ix) Rule is partly made absolute in the above terms;

- (x) We make it clear that the petitioners shall continue to be bound by the said undertakings;
- (xi) In view of the above order, pending chamber summonses do not survive.

(SMT. VIBHA KANKANWADI, J.)

(A.S. OKA, J.)