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

WRIT PETITION NO.2526 OF 2014

Mrs. Shakuntala V. Ratangharya & Ors.	... Petitioners
Vs.	
MCGM & Ors.	... Respondents

Mr. Bhavin R. Bhatia for the Petitioners.
Ms. Pallavi Thakar for the Respondent - BMC.

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

DATE : 12th JUNE, 2017

PC.

1 The challenge in this Petition under Article 226 of the Constitution of India is to the notice dated 26th June, 2014 issued by the Mumbai Municipal Corporation under Section 354 of the Mumbai Municipal Corporation Act, 1888. In the said notice, the Mumbai Municipal Corporation observed that the building subject matter of the notice (Blue Bird Apartment) is required to be demolished as it is in dangerous and ruinous condition. The petitioners are claiming to be owners of the shops on the ground floor of the said building. The petitioners are relying upon the opinion of M/s. Profiles Structural Consultants and registered structural auditors which is dated 28th June, 2014. The opinion of the structural consultant is that upper three floors

of the building suffer from major structural distress and need to be demolished by taking due care without affecting the integrity of ground and first floor. In short, the report suggests that by keeping the ground and first floor intact, the upper floors should be demolished which are suffering from major structural distress. Thus, the report relied upon by the petitioners proceeds on the footing that at least three floors of the building are required to be pulled down. The case of the petitioners is that ground floor can be saved while demolishing the upper floors which are in dilapidated condition.

2 The question whether the ground floor can be saved while demolishing upper floors is a disputed question of fact. Therefore, we decline to entertain this Petition under Article 226 of the Constitution of India. Hence, Writ Petition is rejected. However, remedy of the petitioners of filing a civil suit is kept open.

(SMT. VIBHA KANKANWADI, J)

(A.S. OKA, J)