

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 1863 OF 2017**

Tushar H. Shah and 14 Ors Petitioners

Vs.

State of Maharashtra and 4 others Respondents

Mr. Atul Damle senior advocate a/w Mr. Ritesh Singh i/b Sanjeev R. Singh for the petitioner

Mr. Aspi Chinoy senior advocate a/w Mr. Sujit Lahoti, Mr. Anil J. & Ms. Ayesha Pinto i/b Legal Associates for respondent no. 6.
for the Respondent.

Mr. A. Y. Sakhare senior advocate a/w Mr. Joel J. Carlos and Mr. Rohan S. Mirpury a/w Ms. Vandana Mahadik for MCGM
Mr. Sukanta Karmarkar AGP for the State.

**CORAM : SMT. VASANTI A. NAIK,
RIYAZ I. CHAGLA, JJ.**

DATE : OCTOBER 9, 2017.

P.C.

By this petition, the petitioners challenge the report of the Technical Advisory Committee (hereinafter referred as 'TAC') dated 08/06/2017 that the building under reference may collapse without giving any warning, thereby endangering the life and property of the respondents and the people residing in the adjoining properties and the passersby. In the impugned report, the TAC has observed that the structure under reference is not habitable and needs to be demolished immediately by following the due process of law.

Shri. Damle, the learned senior counsel appearing for the petitioners submitted that the TAC has not followed the guidelines in the judgment in writ petition (L) no. 1135 of 2014, in as much as the TAC has not carried out visual inspection of the state of the internal and external plaster, plumbing, drainage etc as per the guidelines in para 9 (d) (i) of the judgment. It is stated that there is non compliance of the guidelines in paragraph 9 (d) (ii), in as much as specific tests like untrasonic pulse velocity test, rebound hammer test, half cell potential test etc are not carried out by the TAC at all.

Shri. Sakhare, the learned senior counsel for the Corporation states that the members of the TAC could not personally visit the premises as several buildings in Mumbai are required to be inspected by the TAC as per the guidelines in the judgment in writ petition (L) no. 1135 of 2014. It is submitted that the TAC had deputed 5 junior engineers of different departments of the Municipal Corporation to carry out visual inspection. It is fairly admitted that since the Corporation does not have the machinery to carry out specific tests like untrasonic pulse velocity test, rebound hammer test, half cell potential test etc as mentioned in clause (d) (ii) of the guidelines, the said tests were not conducted. It is stated that some expenditure is required for conducting the said tests and it would not be possible for the Corporation to conduct the said tests without any financial assistance from the parties.

Shri. Damle, the learned senior counsel for the petitioners and Shri. Chinoy, the learned senior counsel for the respondent no. 6 state that their clients would pay the expenses by contribution.

Since admittedly the specific tests required to be performed as per the guidelines in para 9 (d) (ii) were not conducted by the TAC, it would be necessary to quash and set aside the report of TAC. The TAC should conduct the tests mentioned in paragraph 9 (d) (ii) of the judgment in writ petition (L) no. 1135 of 2014, as are necessary, within a time frame. Since some time would be required for performing the said tests, without going into the merits of the submission made on behalf of the respective parties about the requirement of the members of the TAC to personally carry out visual inspection, as required by clause (d) (i), we wish to direct the members of the TAC to carry out visual inspection so that the said question may not fall for consideration when the TAC submits a fresh report after carrying out the tests that are required to be carried out in terms of clause (d) (ii) of the guidelines in the judgment in writ petition (L) no. 1135 of 2014. If the visual inspection is carried out by the members of the TAC immediately, some time would be saved and the TAC would be able to submit a fresh report, no sooner than the required tests are conducted, as per clause (d) (ii) of the guidelines.

Hence, for the reasons aforesaid, the writ petition is partly allowed. The

report of the TAC dated 08/06/2017 is hereby quashed and set aside. The members of the TAC are directed to carry out the visual inspection as per the guidelines in paragraph 9 (d) (i) in the judgment in writ petition (L) no. 1135 of 2014 within 8 weeks. The specific tests, that are required to be conducted as per clause (d) (ii) of the guidelines should also be conducted as early as possible and positively within 8 weeks. With the aforesaid directions, the writ petition stands disposed of with no order as to costs.

[RIYAZ I. CHAGLA J.]

[SMT. VASANTI A. NAIK, J.]