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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2105 OF 2014**

Denzil X.P. Colaco and Ors.

... Petitioners

Vs.

The Municipal Corporation of Greater Bombay & Ors.

... Respondents

Mr. Rushil Mehta i/by J.J. Shah for the Petitioners.

Ms. Kejali Mastakar for the Respondent Nos.1 to 3.

Mr. K.R. Trivedi, AGP for the Respondent No.4.

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

DATE : 26th JULY, 2017

P.C.

1 Rule. The learned counsel appearing for the first to third respondents waives service. The learned AGP for the fourth respondent waives service. Forthwith taken up for final disposal.

2 By this Petition under Article 226 of the Constitution of India, the petitioners have taken an exception to the notice dated 28th April, 2014 issued by the first respondent – Municipal Corporation under Section 354 of the Mumbai Municipal Corporation Act, 1888. The building subject matter of this Petition has been more particularly described in paragraph 3. The petitioners are claiming to be the tenants

in respect of the different premises in the said buildings. The property on the building is standing vests in the fourth respondent. By filing an additional affidavit, the petitioners are relying upon the report of Shri Kishor Bhoir, Structural Engineer/ R.C.C. Consultant. The said report indicates that the building can be repaired as it falls in 'C-2A' category. There is an affidavit in reply filed by the first respondent of Shri Ram M. Bhatia, Designated Officer. Reliance is placed in the said reply of Structural Stability Report of M/s. Shashank Mehendale & Associates. On the basis of the said report, a conclusion is drawn that the building falls in 'C-1' category.

3 On the earlier date, we had indicated to the learned counsel appearing for the Municipal Corporation that in view of the conflicting opinions expressed by two Structural Engineers, the case will have to be referred to Technical Advisory Committee (TAC). Today, the submission of the learned counsel appearing for the Mumbai Municipal Corporation is that perusal of the report of Shri Kishor Bhoir submitted by the petitioners shows that he has not conducted any scientific test before recording his opinion and that his opinion is based only on visual inspection. In view of the said report, we called the learned counsel appearing for the Municipal Corporation to produce for perusal of the Court the opinion of M/s. Shashank Mehendale & Associates.

Accordingly, the said opinion was shown to the Court. The opinion is recorded in a single page letter. Thus, even M/s. Shashank Mehendale & Associates has not conducted any tests and therefore, his opinion that the building falls in category 'C1' has no basis at all. Similarly, the opinion of Shri Kishor Bhoir has no basis at all.

4 Nevertheless, there is a conflict of opinions expressed by two experts and therefore, it will be appropriate if the case is referred to TAC. The learned counsel appearing for the petitioners on instructions states that TAC may appoint a structural consultant on the panel of the Municipal Corporation to conduct various tests and the petitioners are ready and willing to bear the cost and remuneration payable to the structural consultants. He states that the petitioners will pay requisite amount as and when a bill raised by the structural consultant is submitted to them.

5 The learned counsel appearing for the petitioners states that the undertakings have been filed by the petitioners in terms of the order dated 8th June, 2017. We find that the undertakings are not strictly in terms of the said order. Therefore, the petitioners will have to file fresh undertakings. Hence, we dispose of the Petition by passing the following order :-

ORDER

- (i) We direct the Mumbai Municipal Corporation to refer the case to TAC. Reference shall be made within a period of one week from the date on which this order is uploaded;
- (ii) In the report relied upon by the Petitioners of Shri Kishor Bhoir, Structural Consultant, he has stated that the first floor as well as roof above it are unsafe and it is likely to collapse. The learned counsel appearing for the petitioners on instructions states that the first to third petitioners are the occupants of the shops on the ground floor and the fourth petitioner is an occupant of a residential flat on the first floor. He states that the fourth Respondent will forthwith stop the user of the residential flat on the first floor. We accept the said statement;
- (iii) TAC shall submit a report to the concerned Authority of the Mumbai Municipal Corporation within a period of two months from the date on which a reference is made;
- (iv) The report of TAC shall be considered by the Competent Authority of the Municipal Corporation and Competent

Authority will decide whether it is necessary to implement the impugned notice under Section 354 of the Mumbai Municipal Corporation Act, 1888. The decision taken by the Competent Authority along with copies of TAC report shall be served to the petitioners and the occupants/tenants in respect of the building. If the Competent Authority has decided to implement the impugned notice, we direct that even a copy of the said decision shall be forwarded along with the TAC report.

- (v) Till the date of communication of the decision taken by the Competent Authority on TAC report to the first to third Petitioners, no action of demolition shall be taken by the Mumbai Municipal Corporation as regards the ground floor of the subject building subject to condition of the first to third petitioners filing a fresh undertaking in this Court stating therein that till the date of communication of the decision of the Competent Authority, they will continue to occupy the premises on the ground floor at their own risk. The undertaking is to further state that the first three petitioners shall display notices in their respective shops at the prominent places informing their customers that they will enter the shop premises at their own risk as there is

already an order under Section 354 of the said Act of 1888.

The undertaking to further state that in the event of collapse of the ground floor of the building or any part thereof, the said three petitioners will be solely responsible for the loss or damage caused to the third parties. In the event, the Competent Authority directs implementation of the impugned notice, the protection granted to the first three petitioners as regards the ground floor shall continue to operate for a period of three weeks from the date of communication of the order of the Competent Authority to the said petitioners;

- (vi) If fresh undertakings as aforesaid are not filed within a period of three weeks from the date on which this order is uploaded, the protection granted to first three petitioners will come to an end;
- (vii) Copies of the undertakings, if filed, shall be furnished to the Advocate for the Mumbai Municipal Corporation;
- (viii) We make it clear that notwithstanding this order, it will be open for the Municipal Corporation to dismantle the first floor of the building without causing any damage

of whatsoever nature to the premises on the ground floor;

(ix) We make it clear that we have not made any adjudication on the structural status of the building and all issues in that behalf are left open to be decided by TAC;

(x) It will be open for the Mumbai Municipal Corporation to take action of dismantling or demolition of the first floor after the expiry of the period of four weeks from the date on which this order is uploaded;

(xi) Rule is made partly absolute on above terms.

(SMT. VIBHA KANKANWADI, J)

(A.S. OKA, J)