

Amk

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

WRIT PETITION NO. 1169 OF 2017

Seth C. V. Dani High School & Ors. .. Petitioners
Vs.
Municipal Corporation for Greater Mumbai & Ors... Respondents

Mr. Jitendrakumar G. Damani for the Petitioners.
Mr. Vishal Kanade a/w. Mr. D. D. Singh for the Respondent No.6.
Mr. Mohit Jadhav, Additional Government Pleader for the Respondent-
State.
Ms. Pallavi Thakar for the Respondent-MCGM.

**CORAM : SMT. VASANTI. A. NAIK AND
MR. RIYAZ I. CHAGLA, JJ.**
DATE : 8th DECEMBER, 2017.

P. C. :

Heard.

After hearing the parties for some time, we find that this Court had not directed the corporation to secure the report from the Technical Advisory Committee and the respondent-landlord had asked the corporation to secure the report from the TAC as the reports of the corporation and the respondent-landlord were conflicting. We find that the petitioners or their Technical Consultant/Structural Engineer/Architect did not participate in the proceedings before the TAC, as they were not granted any opportunity to do so. The petitioners were also not permitted to submit the report of their Technical Consultant. We find that the action on the part of the corporation of referring the matter to the TAC though no report of the Structural Engineer of the tenants-occupiers was submitted to the corporation is illegal. The TAC report would be bad in law as neither the petitioner nor the Technical Consultant/Structural Engineer/Architect of the petitioner were permitted to participate in the proceedings before the

TAC. Hence, in the circumstances of the case, we dispose of the writ petition by passing the following order:

- (i) The matter is referred to the TAC for preparing a fresh report as per the directions issued in Writ Petition (L) No. 1135 of 2014 within three months.
- (ii) Since the visual inspection and the specified tests are conducted by the TAC before preparing the report, the TAC may grant an opportunity to the petitioner to participate in the proceedings before the TAC through their Technical Consultant/Structural Engineer/Architect and then prepare the report. Since we find that only ND test is not carried out by the TAC, the TAC shall carry out the said test before preparing the report.
- (iii) The expenses for carrying out the ND test should be borne equally by the petitioner and the respondent-landlord and should be paid to the corporation immediately on demand.
- (iv) The parties to maintain status quo till the TAC prepares the report. The petitioners may reside in the premises at their risk and cost.
- (v) No order as to costs.

[RIYAZ I. CHAGLA, J.]

[SMT. VASANTI A. NAIK J.]