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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2224 OF 2015**

Dena Jyoti Co-operative Hsg. Society Ltd. ... Petitioner
Vs.
Municipal Corporation of Greater Mumbai and Anr. ... Respondents

Mr. Shashank Chaudhari i/by S.V. Masurkar for the Petitioner.
Ms. Vandana Mahadik for the Respondents – BMC.

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

DATE : 4th JULY, 2017

PC.

1 Heard the learned counsel appearing for the petitioner. The challenge in this Petition under Article 226 of the Constitution of India is to the notice issued by the Mumbai Municipal Corporation under Section 354 of the Mumbai Municipal Corporation Act, 1888 (for short “the said Act”). The notice records that the building of the petitioner is in ruinous condition and is likely to fall. In fact on 20th May, 2015 eviction notice was issued to the members of the petitioner.

2 On 15th September, 2015 when this Petition came up on board, this Court passed an order. Paragraphs 2 to 4 of the said order reads thus :-

- “2 Learned counsel for the petitioner seeks leave to amend for annexing a copy of a report of structural Engineer. Accordingly, amendment to be carried out within two weeks from today. Place the Petition on 12th October, 2015.
- 3 In the meanwhile, the Municipal Corporation will consider whether it is necessary to make a reference to TAC.
- 4 Till next date, further action on the basis of the notice under section 354 of the Mumbai Municipal Corporation Act shall not be taken subject to the condition of all the members of the petitioners filing undertaking in this court stating that they shall continue to occupy the premises in their respective possession at their own risk. The members to further state that in the event there is any collapse of the building or a part thereof, they will be alone responsible for the loss caused to any third party. If such undertakings are not filed on or before 1st October, 2015 by all the members of the petitioner, ad-interim relief shall stand vacated without further reference to the court.”

3 Today, an affidavit is filed by Mr. Shridhar R. Anchan, Chairman of the petitioner. In the said affidavit, reliance is placed on Structural Audit Report dated 18th August, 2015 submitted by a Structural Engineer. In paragraph 5 of the affidavit tendered today, it is stated that the petitioner - Society carried out repairs to the building by

spending a sum of Rs.10 Lakhs and by a letter dated 21st June, 2016 informed the Municipal Corporation that repairs have been carried out. By a letter dated 24th October, 2016 the Municipal Corporation responded by informing the petitioner that the building has been already declared as falling in C-1 category.

4 On a query made by this Court, the learned counsel appearing for the petitioner stated that repairs were carried out without obtaining permission of the Mumbai Municipal Corporation.

5 The building in question was protected from demolition on the basis of ad-interim order dated 15th September, 2015. During the pendency of the Petition, the petitioner has taken law in its own hand and has carried out repairs to the building without obtaining permission of the Municipal Corporation. The report of Shri Shashank Mehendale and Associates which is relied upon by the petitioner (Exhibit - B to the Petition) itself notes the extensive damage caused to the building including damage to structural members. Mr. Mehendale suggested carrying out of structural repairs.

6 Thus, it is obvious that during the pendency of this Petition, major repairs were carried out by the petitioner to the subject building

without obtaining permission of the Municipal Corporation and without seeking permission of this Court.

7 Writ jurisdiction under Article 226 of the Constitution of India is always discretionary and equitable in nature. Considering the conduct of the petitioner of carrying out repairs without obtaining permission of the Competent Authority and without obtaining permission of this Court during the pendency of this Petition, we are of the view that the petitioner cannot be allowed to invoke extraordinary jurisdiction under Article 226 of the Constitution of India. The Petition is accordingly rejected.

(SMT. VIBHA KANKANWADI, J)

(A.S. OKA, J)