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

WRIT PETITION NO. 1991 OF 2015

Inderjit Singh Sethi & 3 Ors.

...Petitioners

Vs.

The Municipal Corporation of Greater
Mumbai & 4 Ors.

...Respondents

Mr. Rajiv Narulla i/b. Jhangiani Narulla & Associates for the
Petitioners

Mr. S.U. Kamdar, Senior Counsel a/w. K.H. Mastakar for the MCGM

Mr. J. Reis, Senior Counsel a/w. Mr. H.S. Anand i/b. Mr. Akshay
Patkar for Respondent No.6

CORAM : NARESH H. PATIL &

M.S. KARNIK, JJ.

DATED : 27TH FEBRUARY, 2017

P.C. :

We have heard the learned Counsel appearing for the respective parties at length. The Petitioners challenges the notice issued under Section 354 of the Mumbai Municipal Corporation Act, 1888 (for short referred as “the Act”). The Petitioners have also questioned the Technical Advisory Committee (TAC) report dated 9th June, 2016, which was submitted before this Court during the pendency of this Petition.

2. By an order dated 10th August, 2015 the Division Bench of this Court (Coram: A.S. Oka & Revati Mohite Dere, JJ. Dtd. August 10, 2015) passed following order in WPL No.2266 of 2015:

“Not on board. Taken on board.

1. The learned Counsel for the petitioners states that the report of the structural Engineer was forwarded by the petitioners to the Mumbai Municipal Corporation which records that the building can be repaired. His submission is that now the Mumbai Municipal Corporation will have to refer the matter to the Technical Advisory Committee. The learned counsel for the Mumbai Municipal Corporation seeks time to take instructions.

2. Place the petition on scheduled date which is 24th August, 2015. Till next date, no action shall be taken on basis of the notice under section 354 of the Mumbai Municipal Corporation Act, 1888 subject to the condition of the petitioners filing undertakings in this Court stating that they shall continue to occupy their respective premises at their own risk and in the event there is any collapse of the building, they will be responsible for the loss caused to any third party. Undertakings shall be filed in this Court within a period of one week from today. On the failure of the petitioners to file undertakings within the stipulated period, ad-interim relief shall stand vacated without reference to the Court. Stand over till 24th August, 2015”.

3. Learned Senior Counsel Mr. Kamdar appearing for the

Corporation on instructions submits that the Corporation is willing to reconsider the issue again after going through the records and according a brief hearing to the affected parties ie., the Petitioner and Respondent No.6.

4. Learned Senior Counsel, therefore, submitted that without expressing any view the matter be transferred to the TAC for reconsideration.

5. During the course of hearing we perused the guidelines issued by this Court in Writ Petition (L) No. 1135 of 2014 the contents of impugned notice dated 22nd May, 2015 issued under Section 354 of the Act, the structural reports submitted on behalf of the Petitioner, society, Respondent No.6 herein, the TAC report and other relevant documents placed on record.

6. At this stage we do not express any opinion on the issue raised before us as the matter is remanded back to the TAC.

7. In these circumstances we pass following order:

ORDER

(a) The TAC report dated 9th June, 2016 is set aside.

(b) We direct the TAC to appoint a Structural Engineer for carrying out the test specified in guidelines – d(i)(ii) of the Judgment dated 23rd June, 2014 in Writ Petition (L) No. 1135 of 2014 the cost of which shall be borne by the Petitioners and the same shall be deposited within ten days with the Corporation on intimation given by the Corporation to the Petitioners.

(c) The TAC after receipt of the report of the structural engineer shall consider all the earlier reports submitted by and on behalf of the Petitioners, Corporation Officers, Respondent No.6 and the Society.

(d) The TAC shall give a brief hearing to the Petitioner

and Respondent No.6.

(e) After hearing the parties the TAC shall formulate its opinion in a reasoned report.

8. We direct that this exercise shall be completed within six weeks from today.

9. Till the report is submitted the Petitioners shall be bound by the undertaking as directed by this Court on 10th August, 2015. It is clarified that any damage if caused to the person or property of the Petitioners during this period due to collapse of the subject structure / part of the structure, if any, it will be at the risk of the Petitioners and no third party shall be blamed for the same.

10. The report of the TAC shall be served on the Petitioners and Respondent No.6 herein. In case the report of the TAC is adverse to the Petitioners then status-quo as on today shall be maintained for a period of two weeks from the date of service of the report on the Petitioners.

11. The undertaking given by the Petitioners on 10th August, 2015 shall further get extended for a further period of two weeks in case of adverse report by the TAC.

13. Two affidavits filed by the Petitioners today before the Court in Writ Petition No.1991 of 2015 and in WPL No. 2266 of 2015 are taken on record.

14. In view of the aforesaid directions the Petition stand disposed of.

(M.S. KARNIK, J.)

(NARESH H. PATIL, J.)