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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 2499 OF 2017**

Mr. Amba Boja Shetty and Others Petitioners.
V/s
The Municipal Corporation of
Greater Mumbai and Others Respondents.

**WITH
WRIT PETITION (L) No.2532 of 2017**

Mr. Rasiklal Gordhandas Doshi and Others Petitioners.
V/s
The Municipal Corporation of
Greater Mumbai and Others Respondents.

Mr. Vijay Sinh Thorat, Senior Counsel a/w Mr. Bipin Joshi & Mr. P.B. Joshi for the Petitioner in WPL/2499/2017.

Mr. Armin Wandrewalla a/w Mr. Bipin Joshi & Mr. P.B. Joshi for the Petitioners in WPL/2532/2017.

Ms. Vandana Mahadik for Respondent Nos. 1 and 2 in both the Writ Petitions.

Mr. Himanshu Takkae, Assitt. Govt. Pleader for Respondent Nos. 5 and 6 – State in WPL/2499/2017.

Mr. Kedar Dighe, Asstt. Govt. Pleader for Respondent Nos. 5 and 6 – State in WPL/2532 of 2017.

Mr. Hemant Parikh - Respondent No.3, in both the Petitions, present in Court in person.

**CORAM: B. R. GAVAI &
M.S. KARNIK, JJ.**

DATE: 28th September, 2017

P.C.:-

1] Rule. Rule is made returnable forthwith. Respondents waive service. Heard, by consent of parties.

2] These Petitions arise out of peculiar facts and circumstances. Petitioners, in both these Petitions, are tenants of one building viz. Dr. Damaji Sadan (hereinafter referred to as “the said building”). The said building was originally owned by one Shantilal Damaji Mehta. By a Deed of Conveyance, the said building came to be conveyed in favour of Respondent No.4, of which Respondent No.3 is a partner.

3] It appears that there has been a dispute between the Petitioners on one hand and Respondent No.3 on the other hand with regard to development of the building. It is the contention of Respondent Nos. 3 and 4 that the said building is in a dilapidated condition, which requires demolition, whereas it is the contention of the Petitioners that the said building, though, is in a dilapidated condition, it is repairable.

4] Petitioners have approached this Court being aggrieved by the action taken by Respondent – Corporation in the midnight of 06/09/2017 and further on 07/09/2017, thereby demolishing part of the said building. It is the contention of the Petitioners that the

building was not in a dilapidated condition, which required urgent demolition. However, at the behest Respondent Nos. 3 and 4, in collusion with the Officers of Respondent – Corporation, the building has been demolished, so as to suit the proposal of Respondent Nos. 3 and 4 for reconstruction of the said building without ensuring the rights of the tenants.

5] Taking into consideration the submissions advanced, we had directed Respondent – Corporation to take into consideration the application made by the Petitioners for repairs of the building under the provisions of Section 499 of the Mumbai Municipal Corporation Act, 1888. We are informed that the application of the Petitioners stood rejected vide order dated 26/09/2017. The reason given in the rejection order was that, two R.C.C. Consultants' remarks were obtained and, therefore, it would be appropriate that the matter should be referred to TAC for deciding the same.

6] However, when the matter was listed yesterday, a Report of Structural Engineer viz. Femstruct Consulting Engineers LLP, having Registration No.STR/R/087, was produced before this Court. The said report was taken on record and marked “X” for the purpose of identification.

7] Perusal of the said Report would reveal that it is a detailed report, prepared by the Structural Engineer after conducting various tests which are required to be conducted by assessing the position of

the building, as to whether it requires demolition or it is repairable one. The Structural Engineer has classified the building as C-2A.

8] Mr. Thorat, learned Senior Counsel appearing on behalf of the Petitioners, made a statement that the Petitioners are willing to carry out the repairs of the said building without prejudice to their rights to recover part of the amount from the owner in accordance with the provisions of the Maharashtra Rent Control Act.

9] However, yesterday when the matter was heard we were of the view that before passing the order to that effect, it was necessary that Respondent Nos. 3 and 4 should be given an opportunity of being heard. When the matter was being argued yesterday, wife of Respondent No.3 appeared before the Court and informed the Court that Respondent No.3 was behind the bars with regard to one complaint under section 420 of the Indian Penal Code. We accordingly, passed an order, directing PSO, Tilak Nagar Police Station, to produce Respondent No.3 before this Court at 11.00 A.M.

10] Accordingly, PSO, Tilak Nagar Police Station, has produced Mr. Hemant Parikh before this Court. We have heard him extensively. Respondent No.3, who appears in person, states that though sincere attempts have been made by him to negotiate the matter with the Petitioners, who are tenants, for redevelopment of the building, for the reasons best known to the Petitioners, they are not co-operating with the said proposal and, as such, the building could not go for

redevelopment. He states that the Petitioners are acting at the behest of developer of adjoining properties. He further states that he has a good market standing and is in the process of completion of 400 tenements under various schemes including SRA schemes. This position, however, is seriously disputed by Mr. Thorat, learned Senior Counsel for the Petitioners. He submitted that Respondent No.3 is involved in various litigations, including criminal and, as such, is not a trustworthy person.

11] Be that as it may, we find that the urgent grievance of the Petitioners can be met, inasmuch as Respondent No.3 has himself stated that he has no objection if the Petitioners are permitted to carry out the repairs without prejudice to his rights to develop/redevelop the said building as an owner thereof.

12] We find that the stand taken by Respondent No.3 is very reasonable. He himself has taken into consideration the urgent need of the repairs of the building and has voluntarily given his no objection for repairs of the building without prejudice to his rights to develop/redevelop the said building. The photographs of the building would reveal that substantial part of the building, on account of demolition carried out by the Respondent – Corporation, has become uninhabitable. We are, therefore, of the considered view that in the interest of large number of tenants, who are Petitioners, it is necessary that, without the same being treated as precedent, permission to carry out the repairs as per the Structural Audit Report submitted by the

Structural Engineers viz. Femstruct Consulting Engineers LLP, needs to be granted. We are inclined to take this view in the peculiar facts and circumstances of the present case. No doubt, that competent authority of the Corporation has already rejected the permission. We, however, found that the rejection of permission is totally on untenable ground. The requirement to refer the matter to TAC which is appointed as per the Order dated 23/06/2014 passed by Division Bench of this Court (Coram: Anoop V. Motha & A.A. Sayed, JJ.) in Writ Petition (L) No. 1135 of 2014, would arise only if there are two conflicting reports, one by the owner and the the other by the tenants, submitted for consideration.

13] In the present case, the Structural Audit Report submitted on record by the Petitioners is a detailed report, which has been prepared after carrying out necessary tests, which are required to be carried out prior to arriving at an opinion as to whether the building is required to be demolished or it is repairable, whereas the Report on which the Corporation relies is only based on the visual condition of the building and no scientific tests, as are required to be carried out, have been carried out by Samir J. Mhatre, Structural Engineers, from whom the Officer of the Corporation has obtained the Report. It is further to be noted that the said Report is not obtained by the owner of the building. However, it appears that the Officer of the Corporation, in order to demolish a part of the building, had himself obtained the said Report, which was prepared by Samir J. Mhatre, Structural Engineers. The Report is as vague as it could be. Prima facie, we are of the view

that the said Report has been obtained by the Officer of the Corporation only in order to enable demolition of the building. However, since the said Officer is not impleaded as party-respondent in this Petition in his personal capacity, we do not wish to observe anything more with regard to the conduct of the Officer of the Corporation.

14] In that view of the matter, we allow the petition by permitting the Petitioners to carry out the repairs as per the Report prepared by Femstruct Consulting Engineers LLP. Needless to state that the cost of the repairs shall be borne by the Petitioners. However, all this will be without prejudice to the rights of the Petitioners to claim any amount, if they are entitled in law, from Respondent Nos. 3 and 4 and also without prejudice to the rights of Respondent Nos. 3 and 4 to develop/redevelop the said building in accordance with law.

15] However, we clarify that, if, in the event, Petitioners on one hand and Respondent Nos. 3 and 4 on the other hand decide to sit together and arrive at a mutually agreeable proposal for redevelopment of the said building, the aforesaid order would not come in the way of either the Petitioners or Respondent Nos. 3 and 4.

16] Rule is made absolute in the aforesaid terms.

(M. S. KARNIK, J.)

(B. R. GAVAI, J.)