

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.176 OF 2014

Kirti Velji Shah and Others. .. Petitioners
Vs

The Municipal Corporation of Greater Mumbai
and Others. .. Respondents

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Ms. Prerana Lalchandani along with Shri Chinmay Acharya i/b Ms. Reena Salunkhe for the Petitioners.

Shri A.Y. Sakhare, Senior Counsel along with Ms.Geeta Joglekar for the Respondent Nos.1 to 3.

Shri Vaibhav M. Parashurami for the Respondent Nos.4 and 5.

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

DATED : 19TH JULY 2017

PC.

1. Heard learned counsel appearing for the Petitioners and learned senior counsel representing the first to third Respondents. This Petition concerns a building known as “Khandke Building No.3”, more particularly described in Paragraph 1 of the Petitioners. The challenge in this Petition under Article 226 of the Constitution of India is to the three notices. The first is dated 22nd October 2013 issued by the first Respondent Mumbai Municipal Corporation under Section 354 of the Mumbai Municipal Corporations Act, 1888 (for short “the said Act”). By the said notice, the Petitioners were informed that as the building is in a dilapidated condition, it is required to be pulled down. The second

notice which is impugned is dated 23rd October 2013 of the first Respondent which again records that the building is required to be pulled down and infact, structural repair permission granted by the first Respondent is revoked. The third notice is dated 24th October 2013 which has been issued by the fifth Respondent calling upon the Director of the sixth Respondent (the Owner) to take steps for vacating the building. The said notice is based on the notice issued by the first Respondent under Section 354 of the said Act.

2. Today, the learned senior counsel appearing for the Mumbai Municipal Corporation has produced for perusal of the Court the file containing opinion of the Technical Advisory Committee (TAC). The TAC in its report submitted in July 2015 has recorded that the building should be repaired immediately. By a letter dated 29th April 2016, the Designated Officer of the concerned Ward of the first Respondent addressed a letter to the Executive Engineer of the fifth Respondent which records that as directed by the Chairman of the TAC, the work of strengthening and structural repairs of the building has been carried out and the structural stability certificate has been submitted along with the proforma-B. The letter records that it is proposed to withdraw action under Section 354 of the said Act in view of the repair permission granted under the said letter. The fifth Respondent was called upon to forthwith submit structural repair

stability certificate along with Proforma-B and to inform the Municipal Corporation whether the fifth Respondent has any objection for withdrawal of the said notice. The learned senior counsel appearing for the first Respondent states that so far the first Respondent has not acted upon the same. The learned counsel appearing for the fifth Respondent has produced for perusal of the Court a letter dated 23rd May 2016 addressed by the Executive Engineer, G/North Division to the Designated Officer of the first Respondent in which it is stated that as the work has been executed by the owner without obtaining no objection certificate of the fifth Respondent, the said office is unable to act upon the opinion given by the Structural Engineer.

3. The impugned action under Section 354 of the said Act was initiated on the footing that the building is in ruinous condition which could not be repaired and it is required to be pulled down. Now the report of the TAC notes that the building is repairable. It is the stand of the first Respondent that the building is already repaired.

4. Therefore, we need not keep the Petition pending and the same is disposed of by passing the following order:-

ORDER :

- (a) We direct the first Respondent to take appropriate decision on the basis of the report of the Technical

Advisory Committee which opines that the subject building is repairable;

- (b) The decision shall be taken as expeditiously as possible in the light of the stand taken by the fifth Respondent. The decision shall be communicated to the Petitioners and the sixth Respondent. Till the date of communication of the decision, no action shall be taken on the basis of the impugned notices;
- (c) If the first Respondent decides to implement the impugned notices, actual implementation shall be commenced only after expiry of one month from the date of service of intimation of the decision taken by the Municipal Corporation along with a copy of the report of the Technical Advisory Committee to the Petitioners and the sixth Respondent;
- (d) The Petition is disposed of on above terms.