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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION LODGING NO. 3002 OF 2016

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| 1. | Mr. Jayant Sunderdas Karia & ors. | .. Petitioners |
| | Versus | |
| 1. | The Municipal Corporation of Greater Bombay & ors. | .. Respondents |

WITH
WRIT PETITION LODGING NO. 3011 OF 2016

- | | | |
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| 1. | Mr. Harish Ruparel & ors. | .. Petitioners |
| | Versus | |
| 1. | The Municipal Corporation of Greater Mumbai & ors. | .. Respondents |

WITH
WRIT PETITION LODGING NO. 2934 OF 2016

- | | | |
|----|-----------------------------------|----------------|
| 1. | Bhamini G. Keni & ors. | .. Petitioners |
| | Versus | |
| 1. | The State of Maharashtra and ors. | .. Respondents |

Mr. P. R. Yadav a/w Priyanka Dubey for petitioners in WPL No. 3002 of 2016.

Mr. J. A. Udaipuri i/by Udaipuri and Co. for petitioners in WPL No. 3011/16.

Mr. Girish Godbole a/w Mr. S. S. Kanetkar, Mr. Sumieet Kothari and Raghavendra B. for petitioners in WPL No.2934/16.

Dr. Abhinav Chandrachud a/w Mr. Shailedra Singh for respondent nos.3 to 5 in WPL No. 3002/16, for respondent nos.5 to 7 in WPL No. 3011/16 and for respondent no.4 in WPL No. 2934/16.

Mr. Sukanta Karmakar, AGP for State in WPL Nos.2934 and 3011 of 2016.

Mrs. Pallavi Thakar for MCGM.

CORAM: NARESH H. PATIL &
M. S. KARNIK, JJ.

RESERVED ON : JANUARY 19, 2017

PRONOUNCED ON : MARCH 10, 2017

JUDGMENT [Per Naresh H. Patil, J.] :

1. Rule, returnable forthwith. Heard finally by consent of parties.
2. Petitioners in Writ Petition Lodging Nos. 3002 and 3011 of 2016 are the original residents of the premises known as “Velbai Velji Arogya Bhuvan”, 196, Koliwada, Sion (East), Mumbai 400 022 (for short “subject structure”). Petitioners in Writ Petition Lodging No. 2934 of 2016 are occupants of the shops on the ground floor of the subject structure.
3. Petitioners challenge the notice of eviction bearing No. AC/TN/OD/310/B & F dated 19/10/2016 issued by Designated Officer FN-I, Asst. Engineer (Building & Factory), F/North Ward of Municipal Corporation, Mumbai and seek consequential reliefs. Petitioners state

that respondent nos.3 to 5 are the original landlords, being trustees of “Bail Velbai Velji Bhimji Charitable Trust”, having their registered office at Godavari Chamber, 43th Floor, S. V. Road, Kandivali (West), Mumbai 400 067. It is alleged that at the behest of respondent nos.3 to 5, the Corporation issued impugned notice. Petitioners are under constant threat of demolition of the subject structure. Petitioners further state that they have submitted relevant documents to respondent no.2, namely, (a) structural audit report by M/s. V. J. Joshi & Associates, (b) structural audit report by M/s. Viztech Consultants, (c) structural audit report by Vastu Associates with N.D. Test Report conducted by EN Lab Services, registered structural engineer, (d) structural audit report by Mr. Milind Patil, structural engineer having B.M.C. License No. STR/P86 with N. D. Test Report conducted by M/s. R. K. Infra Technoclinic Services Pvt. Ltd., appointed by the shop owners of the suit premises and (e) structural audit report dated 15/2/2016 by Veermata Jinabai Technological Institute (VJTI). The petitioners objected to the decision of respondent no.2 in declaring the subject structure in C-1 category (building to be demolished).

4. Mr. Yadav, learned counsel appearing for the petitioners in WPL No. 3002 of 2016 submitted that though the subject structure is old, it

is in repairable condition. Petitioners are residing in the subject structure since last many years. In case the subject structure is demolished, the petitioners would be homeless and would face severe hardship. It is submitted that at the behest of the landlords, the Corporation authorities have acted contrary to the established procedure and decided to pass order to demolish the subject structure. Learned counsel submits that Technical Advisory Committee's report (TAC) is not reasonable and sound one. Said report is erroneous one, it does not consider in depth the reports submitted by the experts submitted on behalf of the petitioners. The TAC has conveniently brushed aside the opinion of the experts/structural engineers favoring that the subject structure could be repaired and need not be demolished. The guidelines, framed by the Division Bench of this court (Coram: Anoop Mohta & A. A. Sayed, JJ.) in **Original Side Writ Petition (L) No. 1135 of 2014, Municipal Corporation of Gr. Mumbai vs. State of Maharashtra and ors., decided on 23/6/2014**, were not followed. Learned counsel submitted that at this stage if a further report from reputed institute like Indian Institute of Technology (IIT) is called, the petitioners would be bound by the said report irrespective of its conclusion. Learned counsel referred to the relevant reports of structural engineers, the TAC report and other relevant documents on record. The petitioners are

ready to bear the cost of repairs.

5. Mr. Udaipuri, learned counsel appearing for the petitioners in WPL No. 3011 of 2016, submitted that the subject structure is in a repairable condition. According to their estimate, around Rs.30 lacks would be required for repairing the subject structure which the petitioners / occupants are ready to bear. Certain persons who are residing in the subject structure have approached the Bombay Small Causes Court claiming tenancy rights. In the submissions of the learned counsel, the landlords are not in a position to develop the subject structure. They do not have financial capacity to develop the building. In such circumstances, the petitioners are left in dark as no concrete proposal has been placed before this court for developing the subject structure after demolishing the same. It is not known to as to when the landlords would develop the subject structure. The landlords conveniently waited for numbers of years to develop the subject structure without repairing it. Learned counsel referred to the report submitted on behalf of the petitioners by the structural engineers and experts. The TAC report is erroneous one, it does not take into consideration all the necessary aspects. The decision of the Corporation, declaring the subject structure as C-1 category, was also

erroneous. Learned counsel submits that there is no existing law to protect the occupiers, owners, tenants of the privately owned structure/building in the city. After staying there for more than 50-60 years, if the structure/building is to be demolished, then the occupants must be protected.

6. Learned counsel for the petitioners, except Mr. Godbloee, submit that the list of tenants is not prepared by the Corporation, which violates the guidelines framed by the Division Bench of this court in the matter of Municipal Corporation of Gr. Mumbai vs. State of Maharashtra and ors. (Supra). The TAC did not send its experts to inspect the subject structure and instead reached conclusion by comparing the reports submitted by the petitioners. Learned counsel further submitted that TAC did not strictly comply with the guidelines framed by this court. The petitioners have challenged the TAC report. The said report is based on comparison of other reports submitted by the petitioners. The guidelines framed by this court need to be modified in the light of the situation in which the petitioners are placed. There is no law to protect them in case the subject structure is demolished and the landlords are not in a position to develop the same in near future.

7. Mr. Godbole, learned counsel appearing for the petitioners/shop owners in WPL No. 2934 of 2016 submits that even if the decision is taken to demolish the building, the entire building need not be demolished. Technically/structurally, there is no need to demolish the ground floor. The ground floor structure is in good condition and without disturbing the ground floor structure, the property could be developed. Learned counsel submitted that if the subject structure is in a repairable condition, then the demolishing the subject structure is not the solution. There are 15 shops on the ground floor. In respect of occupants of three shops, Rent Act proceedings are going on in the appropriate court. Learned counsel submits that the notice issued under Section 354 of the Mumbai Municipal Corporation Act, 1888 (for short Act of 1888) is bad in law. Learned counsel placed reliance on the following decisions :

- (a) Makarand Dattatreya Sugavkar vs. Municipal Corporation of Greater Mumbai and ors. **[(2013) 9 SCC 136]**.
- (b) Vannattankandy Ibray vs. Kunhabdulla Hajee **[(2001) 1 SCC 564]**.
- (c) T. Lakshmipathi and ors. vs. P. Nithyananda Reddy and ors. **[(2003) 5 SCC 150]**.
- (d) Shaha Ratansi Khimji and Sons vs. Kumbhar Sons Hotel Private Limited and ors. **[(2014) 14 SCC 1]**.

8. Dr. Abhinav Chandrachud, learned counsel appearing for the respondents-landlords submitted that the TAC considered the reports of all the experts, engineers and thereafter arrived at a sound and proper reasoning. Learned counsel submits that the notice under Section 354 of the Act of 1888 was issued prior to the framing of guidelines by the Division Bench of this court in Original Side Writ Petition (L) No. 1135 of 2014. In the facts, there was no need for calling one more report from the IIT, which would be a futile exercise. Learned counsel submitted that the list of the occupants could be prepared even before demolishing the subject structure and on that ground the impugned notice and the TAC report need not be set aside. Reference was made to Section 16 of the Maharashtra Rent Control Act, 1999. There are 15 shops on the ground floor and around 10 to 11 persons are personally living and occupying on upper floors. The subject structure is of ground + three floors. Out of 15 shop occupants, agreement of rent was executed with 12 occupants of shops. Three occupants had approached Civil Court. The Suits filed by them were decreed and the respondents-landlords had filed appeal, which is pending consideration. The learned counsel specifically submits that non of the occupants is a tenant of the landlords. They were allowed to occupy the premises for medical treatment purposes at the relevant time. Before 50-

60 years the subject structure was used as sanatorium.

In respect of the structural quality of the subject structure, learned counsel submitted that the same is very old and in a highly dilapidated condition. It has become dangerous to life not only for the occupants but even for third parties. The subject structure has become hazardous for neighbours and passers-by. Therefore, the landlords intend to demolish the same. In respect of TAC report, learned counsel submitted that there is no need to conduct further visual inspection by the TAC in the light of the reports filed by the petitioners on record. This is the third time after remand by this Court that the TAC has expressed its opinion in favour of the landlords of the subject structure. Learned counsel submitted that the guidelines d(ii), framed by the Division Bench of this court in Original Side Writ Petition (L) No. 1135 of 2014, are discretionary in nature. In view of the TAC report and the condition of the subject structure, there is no case for causing interference in the view adopted by the TAC and the Corporation to demolish the subject structure. If the subject structure collapses, then it would cause loss of life and property. Even if the petitioners have undertaken that in such a situation, in case of untoward incident, they are taking the risk, still it would not be legally

permissible to continue to occupy such subject structure in view of highly dilapidated condition of the subject structure. Learned counsel placed reliance on the judgment of this court in the case of Mr. Zubair Malik and ors. vs. Municipal Corporation of Greater Mumbai and ors. **[2015 (1) ALL MR 543]**.

9. Learned counsel appearing for the Corporation submitted that the TAC report is based on analysis of the experts opinion. The TAC is consisting of Senior Officers and Experts in the field. The subject structure is old and it needs to be demolished. In case the subject structure collapses, there is likelihood of loss of life and property. The Corporation has taken into consideration all the aspects of the matter and thereafter issued notice under Section 354 of the Act of 1888. Learned counsel submits that there is no case made out by the petitioners to protect them and the petitions deserve to be dismissed.

10. We have heard the learned counsel appearing for the parties at sufficient length. We have perused the record placed before us. Notice under Section 354 of the Act of 1888 was issued by the Designated Officer FN-I, Asst. Engineer (Building and Factory), F/North Ward of the Mumbai

Municipal Corporation on 19/10/2016. The petitioners submitted reply to the said notice. Petitioners further submitted report of experts. In view of the conflicting opinion of the experts' views, as submitted by the petitioners and the contesting respondents, the TAC held its meeting on 20/8/2015 at 4 p.m. The TAC concluded as under :-

“ The TAC Committee was held on 2.7.2015 at 4.00 p.m. in Director (E.S. & P)'s Chamber. However, the consultants of owner as well as tenants were not present. TAC directed that if the consultant failed to attend the next meeting ex-parte orders will be passed & action will be initiated against consultant. After the TAC called the next meeting on 20.8.2015 at 4.00 p.m. & the committee held accordingly when, both the consultants of owner as well as tenants were present.

The site is inspected by Ward staff and A.E. (B & F) F/North Ward stated in the meeting that there only are the three tenants occupying the premises. Further the test reports submitted by both R.C.C. Consultants are below the standard norms mentioned in I.S. Code and shows doubtful quality of concrete and 90% probability of corrosion of R.C.C. members. Consultant Shri Yogesh P. Patel from Bai Velbai Velji Bhimji Charitable Trust opined that the building is in dilapidated condition, reinforcement has been deteriorated to the extent of 90% R.C.C. slab at same parts are sagged. The consultant V. J. Joshi & Associates opined for major structural repairs without

vacating tenants. It is also observed that there is a suit in a City Civil Court regarding evacuation filed by the owner. However, the same should be dealt by Asstt. Commissioner, F/North Ward separately.

After taking into consideration of both the consultant's report placed on record. Statement recorded during TAC meeting and as per the present site condition explained by ward Designated Officer it appears that the building under reference is in dilapidated condition and unsafe for human habitation TAC does not felt necessary to carry out N.D. Test separately as both the consultants have submitted the report which N.D. Tests.

Looking towards all the above facts, and taking on record the structural audit report of all the consultants TAC opined that the building shall be evacuated immediately and shall got demolished with due care under the supervision of Structural Engineer by following due process of Law. In the mean time ward staff shall directed Owner/Occupier to take necessary preventive measures such as propping etc. till evacuation of the building.”

11. Three writ petitions were preferred against the conclusion reached by the TAC i.e. Original Side Writ Petition (L) Nos.1584, 1616 and 1618 of 2016. By an order dated 16/6/2016, Division Bench of this Court, to which one of us (M. S. Karnik,J.) was party, directed the TAC to

take a fresh decision keeping in view all the earlier reports as also the report of VJTI. Para 4 of the said order reads as under :-

“4. Having heard the learned counsel for the parties and having regard to the fact that there is conflict in the earlier reports and the report submitted by the VJTI, on the broad consensus arrived at during the course of the hearing we dispose of this petition by directing TAC to take a fresh decision keeping in view all the earlier reports as also the report of VJTI with further opportunity to the respondent nos.3 to 5 to submit any other report from the competent expert body in support of their contention that the building in question is dangerous and/or dilapidated. Let the said report, if any, be submitted by respondent nos.3 to 5 within a period of six weeks from today. After expiry of six weeks, in case the report is filed by respondent nos.3 to 5, the TAC shall consider all earlier reports including the report of VJTI and the report as may be submitted by respondent nos.3 to 5 and take a fresh decision in the matter as to whether the building in question can be repaired or is required to be demolished. Let the TAC take a fresh decision within four weeks from the date of receipt of such report from respondent nos.3 to 5. Till the decision as aforesaid is taken by the TAC and for the period of two weeks thereafter, the water facility as also the electricity facility be restored and be continued by the BMC. The occupants in all the petitions which are listed today shall file an undertaking

before this Court within ten days that they will be occupying the structure in question at their own risk and neither the respondent landlord nor the officers of the BMC would be held responsible for criminal action or for any damage caused to them or to any one due to collapse of the building. Needless to say that this Court has not examined the correctness of any of the reports submitted by the parties and the TAC is free to decide the matter as already ordered. All the contentions are kept open.”

12. Thereafter, the Assistant Commissioner (F/North Ward) submitted papers to TAC on 30/7/2016 to take a fresh decision keeping in view all the earlier reports, including report of VJTI and all competent expert bodies, if any. Further fresh structural audit report of the subject structure under reference from the trustees of Bai Velbai Velji Bhimji Charitable Trust carried out by S. P. College Of Engineering was also submitted to TAC by the Asstt. Commissioner (F/North) Ward. Accordingly, TAC arranged meeting on 26/8/2016 with Director (E.S. & P) Chairman of TAC's cabin in the presence of 15 officers/consultants. The TAC prepared comparison statement of tests which was submitted by F/North ward in the meeting held on 26/8/2016 at 2.45 p.m. carried out by structural consultants. The said comparison statement mentioned by the TAC in its report is reproduced as under :-

Test carried out	Standard	M/s. Yogesh Patel	M/s. V.J.Joshi	M/s. Milind Patil	M/s. Vastu Associates	M/s VJTI	M/s College of Engg	SP of	Re-mark
UPV Test (km/sec)	(IS: 1331 Part I) Below 3.00 km/sec. Doubtful 3.00 to 5.00 km/sec (Medium) 3.50 to 4.50 km/sec (Good) Above 4.50 km/sec (Excellent)	1.42 (avg)	2.56 (avg)	-----	2.57 (avg)	1.84 (avg)	1.39 (avg)		
Rebound Hammer Test (Mpa)	(IS:13311 part II) 40 (Very good) 30-40 (Good) 20-30 (fair) <20 (Poor)	12.47 (avg)	17.00 (avg)	14.46 (avg)	17.00 (avg)	28.16 (avg)	16.30 (avg)		
Half Cell Potential (-m.V)	(ASTM/ C876-80) Above(-) 350 mV – Active corrosion. Above (-) 200 mV- High Corrosion. Bent (-) 200 to (-) 350 mV- Uncertainty of corrosion.	433.88	383.00	-----	383.0	351.35	415.45		
Carbonation Test		No Change in Colour	No Change in Colour	-----	No Change in Colour	No Change in Colour	No Change in Colour		

The TAC referred to conclusion of structural auditor M/s.

Yogesh Patel (appointed by trustees), conclusion of structural auditor M/s.

V. J. Joshi, appointed by tenants, conclusion of structural auditor M/s. Milind Patil, appointed by tenants, conclusion of structural auditor M/s Vastu Consultants, appointed by tenants and conclusion of structural auditor M/s VJTI, appointed by tenants. Reference was made to the conclusion of structural auditor M/s. S P College of Engg, appointed by trustees. The TAC conclusion dated 27/9/2016 reads as under :-

“ There are total six Structural Consultants appointed for the matter under reference. Five Structural Consultants were present and the test results submitted by them are taken on record. M/s. Vastu Associates were not present however, the test results submitted by them are taken on record.

The structure is in bad condition and has outlived its life. Sagging is observed and at the same time it was brought to notice of TAC committee that unauthorized extensions are seen. Terrace and the toilets are in a very bad condition. Structural cracks are observed. Sagging is observed at few location.

Considering the above submissions of all the Structural Consultants, Post Graduates staff appointed by MCGM and F/North Ward staff, TAC is of the opinion that the earlier decision given by the TAC on 20/8/2015 holds good and the structure under reference is beyond repairs, as the same is not fit for human habitation and needs to be vacated and demolished immediately.”

This TAC report has been challenged in these petitions.

13. In the comparison statement of tests, result of UPV Test, Rebound Hamer Test, Half Cell Potential and Carbonation Test are mentioned. The structural auditor's report submitted by the petitioners mentioned that it needs immediate action from the occupants. It is also mentioned that the building structure was not maintained / repaired or painted for last many years. The TAC observed in the report that the structure is in bad condition and has outlived its life. Structural cracks are observed at few location. Therefore, the earlier decision taken by the TAC dated 20/8/2015 was held good and it was opined that structure under reference was beyond repairs and same is not fit for human habitation and needs to be vacated and demolished immediately.

14. In the facts, we are not inclined to call for a further test report from IIT. Learned counsel appearing for the petitioners submitted that in view of the guidelines framed by this Court, the TAC ought to have called its own structural audit report through experts. The guidelines were framed by the Division Bench of this court on 23/6/2014 in O.S. Writ

Petition (L) No.1135 of 2014 filed by Municipal Corporation for Greater Mumbai and the notice under Section 354 of the Act of 1888 was issued on 3/5/2014 in this case. Therefore, in strict sense, the guidelines framed by this Court are not applicable. Even otherwise, the TAC, while reaching conclusion had compared the tests reports submitted by both the parties. The reports, include technical / structural aspects of the matter which were considered by the TAC which is comprised of Senior Persons having sufficient knowledge of the technical and structural aspect of the building. We do not find force in the allegations made by the petitioners that at the behest of the trustees, the Corporation had resorted to issuance of impugned notice on the conclusion reached by the TAC. The petitioners had questioned the first report by filing Writ Petitions before this court. While remanding the matters back, the Division Bench of this court had directed for taking a fresh decision by the TAC, keeping in view of all the earlier reports as also the report of VJTI with further opportunity to the respondent nos.3 to 5 therein to submit any other report from the competent expert body in support of their contention that the building in question is dangerous and/or dilapidated. It seems that even before the Division Bench, the issue of TAC appointing its own structural auditor to inspect the building was not raised. The parties complied with the order passed by the

Division Bench in remanding the matter back to the TAC. Therefore, at this stage, we do not find that the matter needs to be further remanded back for appointing its own structural auditor or experts calling for fresh report after inspecting the subject structure. As regards the guidelines, directing to frame list of occupants before demolishing the building, we are of the view that even before demolishing the building, the Corporation could prepare such a list as per the guidelines framed by the Division Bench of this court and on that count the exercise conducted by the TAC, after remand, cannot be faulted. The matter need not be remanded back to the TAC on that ground.

15. We have seen the photographs of the subject structure. We find that the subject structure seems to be very old and in bad condition. But, merely by seeing photographs, condition of the structure cannot be decided. Therefore, structural audit reports, view of the experts are to be looked into. In such cases, Corporation authorities too are duty bound to resort to appropriate steps if it is found that a building/structure is in a dilapidated condition or dangerous for the occupants to live. It is obligation on the authorities to take appropriate steps in accordance with law. In case portion of the building/structure collapses, then it is very

likely that people residing in such building would suffer loss of life, property or may suffer severe injuries. The Corporation is duty bound to avoid any loss of life and property to by-passers, third parties and persons residing in the immediate neighbourhood of such building. From all these angles such issues brought before the court are required to be looked into.

16. The issue regarding lack of appropriate legislation in respect of the occupants of the privately owned building is raised. We reproduce para 4 of the order of this court dated 23/6/2014 in Writ Petition (L) No. 1135 of 2014 :-

“4. In light of the problem faced by the Corporation concerning large number of seriously dangerous and dilapidated buildings/ structures which require to be urgently vacated/demolished, so as to prevent loss of life of the persons residing therein and/or residing in surrounding localities and/or people who are passers-by, the Corporation has issued notices under Section 354 of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as “the said Act”) requiring the occupiers / owners to vacate / pull down the building(s). In view of the fact that in many of such buildings, the tenants and/or occupiers are residing and / or unwilling to vacate the premises inspite of the fact that the

building is dilapidated and dangerous and likely to fall, which would cause loss of human life including of the persons who are refusing to vacate therefrom and/or because of the inaction on the part of the owners, it has become necessary to pass the present order.”

Provisions of Section 354 of the Act of 1888 reads as under :-

“354. Removal of structures, etc., which are in ruins or likely to fall.

(1) If it shall at any time appear to the Commissioner that any structure (including under this expression any building, wall or other structure and anything affixed to or projecting from, any building, wall or other structure) is in a ruinous condition, or likely to fall, or in any way dangerous to any person occupying, resorting to or passing by such structure or any other structure or place in the neighbourhood thereof, the Commissioner may, by written notice, require the owner or occupier of such structure to pull down, secure or repair such structure, subject to the provisions of section 342 and to prevent all cause of danger therefrom.

(2) The Commissioner may also if he thinks fit, require the said owner or occupier, by the said notice, either forthwith or before proceeding to pull down, secure or repair the said

structure, to set up a proper and sufficient hoard or fence for the protection of passers by and other persons, with a convenient platform and handrail, if there be room enough for the same and the Commissioner shall think the same desirable, to serve as a footway for passengers outside of such hoard or fence.

(3) If it shall appear to the Commissioner that any building is dangerous and needs to be pulled down under sub-section (1), the Commissioner shall call upon the owner, before issuing notice thereunder, to furnish a statement in writing signed by the owner stating therein the names of the occupiers of the building known to him or from his record, the area in occupation and location of premises in occupation, possession of each of the respective occupiers or tenants, as the case may be.

(4) If he fails to furnish the statement as required by sub-section (3) within the stipulated period, then the Commissioner shall make a list of the occupants of the said building and carpet area of the premises in their respective occupation and possession alongwith the details of location.

(5) The action taken under this section shall not affect the inter se rights of the owners or tenants or occupiers, including right of re-occupation in any manner.

Explanation.- For the purposes of this section, “the tenant” shall have the same meaning as assigned to it in clause (15) of section 7 of the Maharashtra Rent Control Act, 1999.”.

In respect of conflicting audit reports, experts' reports submitted by the contesting parties, the matter would get referred to TAC according to the Division Bench of this court. Clause 9 (d) of the order refers to the steps to be taken by TAC. We may refer to Clause 9 (l) and (p) of the said order, which read as under :-

“9(l) The rights of the tenants and / or occupiers and /or owners in respect of the said premises / property will not be affected by virtue of evacuation or demolition carried out by the Corporation of such dilapidated and dangerous building in exercise of the power under section 354 of the said Act or by virtue of the fact that the Corporation is the owner of the premises. Such tenant and /or occupier and/or owner will be entitled to re-occupy the premises in respect of the same area after the reconstruction of the building, subject to the prevalent provisions of law pertaining to redevelopment of the property or subject to any arrangement or agreement arrived at by and between such tenants and/or occupiers with the owner of the building. Any action of evacuation /removal/demolition

will not affect the inter se rights of owners if there be more than one owner or there is a dispute as to the title of the property.”

(p) In case privately owned buildings are demolished by the Corporation in exercise of power under Section 354 read with the present order, then the Corporation shall, while granting sanction of redevelopment, impose a condition in IOD (Intimation of Disapproval) that no Commencement Certificate will be issued under section 45 of the MRTP Act, 1966 unless and until an Agreement either providing a Permanent or a settlement is arrived at by and between the tenants and /or occupiers and the landlord in respect of the said demolished premises, is filed with the Corporation at the earliest.”

17. The aforesaid guidelines would take care of the rights of the persons occupying the privately owned building. It was clarified by the Division Bench in para 10 of the order that the guidelines nowhere restrict the power, scope and purpose of Section 354 of the Act of 1888. According to the court, the order was necessitated to make Section 354 effective and to see that human lives are not in any manner compromised.

18. It is for the State to take appropriate decision on the issue of

protecting the occupants of privately owned building, in case of demolition of the building and if necessary make suitable legislation in that behalf.

19. Mr. Godbole, learned counsel, refers to paras 19 and 19.1 of the judgment of the Supreme Court in the case of **Makarand Dattatreya Sugavkar vs. Municipal Corporation of Greater Mumbai and ors.** **[(2013) 9 SCC 136]**, which read as under :-

“19. A careful reading of Sections 354 and 489 shows that if the Commissioner is satisfied that any structure is in a ruinous condition or likely to fall or is in any way dangerous to any person occupying, resorting to or passing by such structure or any structure or place in the neighbourhood thereon, then he can require the owner or occupier of such structure to pull down, secure or repair the same and to prevent cause of danger therefrom:

19.1 The word “structure” used in sub-section (1) of Section 354 includes any building, wall and other structure and anything fixed to or projecting from any building, wall or other structure. Under Section 354 (2), the Commissioner can direct the owner or occupier to take steps enumerated in Section 354(1) on emergency basis. If the owner or occupier fails to take steps in terms of Section 354(1) or (2), then the

Commissioner can suo motu take such measures or cause such works to be executed. In that event the expenses incurred in the taking of appropriate measures and/or execution of work are required to be paid by the person or by any one of the persons to whom the requisition or order issued under Section 354 was addressed.

20. Learned counsel Dr. Abhinav Chandrachud refers to para 16 of the judgment in the case of **Mr. Zubair Malik and ors. vs. Municipal Corporation of Gr. Mumbai and ors. [2015 (1) ALL MR 543]**, which reads as under :

“16. We cannot sidetrack the difficulties of such old legal tenants of such old chawls/buildings owned by poor landlord/owner who are unable to commercially exploit the land property but, as stated to be under obligation to provide temporary alternate accommodation till the construction / development of the dilapidated, dangerous buildings on the land. Such statutory or otherwise legal tenants / occupants cannot be treated on lower footing than the unauthorized or authorized slum dwellers/ occupants on Government or local body's land or property, specially when the urgent situation of compulsory razing of such dilapidated old buildings crops up. The State or local authorities are willing to provide such occupants, dwellers / tenants temporary and/or permanent

alternate accommodation as recorded in earlier orders (supra).
They have permitted various settlements for the same.”

21. We have perused the record, the judgments cited (supra), the structural audit reports submitted by the parties and the TAC's report. We find that the building has become old and dilapidated. The building is more than 60 years old. The structural audit reports show that due to poor condition and age of the building and lack of maintenance, heavy leakages/seepage are observed and vegetation growth is also noticed. Most of the columns, beams and many slabs supporting common passage at all floors are in dangerous condition and many of them are prop supported.

22. The structural audit report of M/s VJTI, appointed by tenants, also shows that the building structure was not maintained / repaired or painted for last many years. Most of the internal RCC members, beams, columns and slabs, have been found in sound condition without any major sign of distress. However, a few internal elements about 10% beams and 5% columns and 20% slab show major distress primarily due to corrosion of reinforcement bars. The VJTI submitted its opinion that the building is

liveable. However, if the habitation in the building is to be continued then the existing props provided in the passage around the open chowk area shall be tightened and severally deteriorated / damaged columns and beams should be repaired on immediate basis.

23. The TAC took into consideration six structural consultants appointed for the matter under reference. In the opinion of the TAC the structure is in bad condition and has outlived its life. Sagging was observed and unauthorized extensions were noticed. Terrace and the toilets are in a very bad condition. The TAC noticed structural cracks and sagging at few locations. In the opinion of the TAC, the building is beyond repairs.

24. This court in exercise of its writ jurisdiction would not sit over for reviewing the merits of the structural audit reports. It is the job of experts. The opinion of the experts reached with regard to the condition of the building being subjective opinion, this court would not substitute its view, even if the opinion suffers from some errors here or there. The opinion of structural audit reports submitted by the tenants and the landlords are conflicting in nature and, therefore, under the guidelines

framed by this court, the TAC would look into and evaluate properly to decide regarding the sustainability of the structure. It is for the TAC to take appropriate decision as to whether the building is in repairable condition or not and whether the persons should continue to occupy such building. If it is in such a dangerous condition that it may collapse and cause loss of life and property, the TAC evaluates the same and submits the report accordingly. The TAC, after going through six structural audit reports submitted before it has again looked into the matter consequent to the remand of the case by this court. Comparison statement mentioned by TAC in its report shows that six experts carried out UPV Test, Rebound Hammer Test, Half Cell Potential and Carbonation Test. Based on these reports, the TAC submitted its report. In the facts, we do not find that it was necessary for the TAC to again get one more report by appointing structural auditor from their side. While remanding the matter to TAC, this court did not direct TAC for a visual inspection report before submitting report. Neither the petitioners pressed for the same.

25. In the facts we are not convinced to call for another report from IIT as suggested by the petitioners. From the record placed before us and looking to the condition of the building, we find that it is a very old

dilapidated structure, it is dangerous for human habitation. In case of collapse of the structure, it is very likely that there could be loss of life and property. In the process, third parties, neighbours, passers-by are also likely to get injured and suffer loss of life and property. Taking into consideration not only the structural audit reports but overall condition of the building, the decision was taken and thereafter the impugned notice was issued by the Corporation.

26. Learned Counsel Shri Godbole appearing for petitioners/shop owners submitted that the ground floor structure is in good condition and it need not be demolished. If required, certain repairs will be carried out. We would not substitute our opinion to the view adopted by TAC in its report in respect of the subject structure. In the facts we are not inclined to accept the contentions advanced by learned Counsel Mr. Godbole.

27. We direct that before demolishing the building, the Corporation shall comply with the guidelines in preparing the list containing names of the tenants/occupants and the area occupied by the tenants/occupants.

28. We observe that as and when landlord decides to develop the subject plot, he would be bound by guidelines No. 9(l) and (p) framed by this Court in WPL No. 1135 of 2014 which would protect the interest of the occupants of the building.

29. In exercise of our writ jurisdiction and in the facts and circumstances of the case, we are not inclined to accept the petitioners' case for quashing and setting aside the notices and the TAC report. The petitions fail and are dismissed accordingly. Rule is discharged. No costs.

(M. S. KARNIK, J.)

(NARESH H. PATIL,J.)