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

WRIT PETITION NO.211 OF 2017

Ansari Rizwan Ahmed Mohd Umer and Ors.

... Petitioners

Vs.

Municipal Corporation of Greater Mumbai and Ors.

... Respondents

Mr. Sharan Jagtiani a/w Mr. Ankit Lohia i/by Mr. Tushar A. Goradia for the Petitioners.

Mr. Pradeep Thorat a/w Ms. Kejali Mastakar for the Respondent Nos.1 to 3.

**CORAM : A.S. OKA &
M.S. SONAK, JJ.**

DATE : 12th DECEMBER, 2017

PC.

1 Considering the nature of controversy involved in this Writ Petition, the same is taken up immediately for final disposal. The Advocate on record for the respondents waives service. The learned counsel appearing for the petitioners on instructions states that the offer given by the first respondent - Municipal Corporation to the petitioners of allotting alternate accommodation is not acceptable to the petitioners.

2 It is not in dispute that the buildings subject matter of this Petition are standing on the land owned by the first respondent – Municipal Corporation and even the buildings are owned by the first respondent – Municipal Corporation.

3 The impugned notice dated 10th November, 2016 proceeds on the footing that the buildings in question are in dilapidated condition and, therefore, occupants of the buildings will have to be evicted. The petitioners have been offered alternate accommodation by the first respondent – Municipal Corporation as described in the impugned notice.

4 There are two reports of the Technical Advisory Committee appointed by the first respondent on record. The first report is dated 8th May, 2014. The said report does not refer to any test conducted by TAC and it only records opinion of TAC on the basis of the report of M/s. Infra Consults, Structural Engineers that immediate action of vacation and demolition of these buildings is necessary. There is a second report of the TAC dated 24th July, 2014. The said report refers to the report submitted by the Rehab Consultants Private Limited. It refers to Ultrasonic Pulse Velocity Test and Rebound Hammer Test conducted by

M/s. Infra Consults. The said report of TAC also refers to report submitted by M/s. Rehab Consultants appointed by the petitioners.

5 Our attention is invited to a decision of the Division bench of this Bench in the case of the Municipal Corporation of Greater Mumbai Vs. State of Maharashtra and Ors.¹. The directions/ guidelines issued under the said judgment are in paragraph 9 thereof. Clause (d) of paragraph 9 reads thus :-

“d) The TAC shall:

i) Carry out a visual inspection of the state of the internal and external plaster, plumbing, drainage, whether the doors and windows close properly, whether steel in columns is exposed, whether there is settlement in the foundation, deflections/sagging, major cracks in columns/beams, seepages/leakages, staircase area and column condition, lift well walls, U.G. tank, O.H. tank column condition, parapet at terraces, chhajjas, common areas, terrace water proofing.

ii) Carry out specific tests like ultrasonic pulse velocity test, rebound hammer test, half cell potential test, carbonation depth test, core test, chemical analysis, cement aggregate ratio as may be considered by TAC as necessary.”

(underline supplied)

1 (2014) SCC Online Bom. 666

6 Sub-clause (ii) of Clause (d) contemplates carrying out of specific tests which are mentioned therein. Out of the tests mentioned therein, M/s. Infra Consults appointed by the Municipal Corporation have conducted only three tests (ultrasonic pulse velocity test, rebound hammer test and carbonation test). However, sub-clause (ii) contemplates carrying out of additional tests such as half cell potential test, core test, chemical analysis, etc. The submission of the learned counsel appearing for the respondents was that TAC was of the view that carrying out of other tests referred in the direction of this Court was not necessary. However, we find that TAC in its second report has not recorded such satisfaction. TAC was bound by the directions issued by this Court. If TAC was of the view that certain tests as set out in sub-clause (ii) of clause (d) are not required to be conducted, the TAC was expected to record that conclusion with brief reasons for coming to the said conclusion.

7 Faced with this difficulty, the learned counsel appearing for the respondents on instructions states that TAC may be directed to conduct a fresh exercise after carrying out necessary tests. The learned counsel appearing for the respondents states that TAC shall give an opportunity of making appropriate representation to the petitioners before submitting its final report.

8 In view of the aforesaid statement, we dispose of the
Petition by passing the following order :-

ORDER

- (i) We direct the first respondent – Municipal Corporation to refer the case of the subject buildings to TAC which shall comply with the directions issued in paragraph 9 of the aforesaid decision. If the TAC is of the view that it is not necessary to carry out certain tests which are specified in the order of this Court, the TAC will have to record the said conclusion along with brief reasons for coming to the said conclusion;
- (ii) As this order is dictated in open Court, without waiting for a copy of this order being made available, reference shall be made to the TAC by the respondents. The TAC shall submit a report as expeditiously as possible and in any event within a period of six weeks from today;
- (iii) If on the basis of the report of the TAC, the first respondent intends to evict the petitioners, the first respondent shall not do so without serving a notice in writing to the petitioners. Along with such notice, a

copy of TAC report shall be forwarded to the petitioners. No action shall be taken on the basis of such notice for a period of three weeks from the date on which the notice is served to the petitioners;

(iv) In view of the above directions, no further steps shall be taken by the first respondent – Municipal Corporation on the basis of the reports at Exhibits – 'H' and 'I' and notice at Exhibit – 'U' subject to condition of all the petitioners filing an undertaking in writing in this Court stating therein that they shall continue to occupy the premises in their respective possession at their own risk. Undertakings to further state that in the event of collapse of subject buildings or parts thereof, if any loss is caused to any third party, the petitioners shall be solely responsible for the said loss;

(v) If the undertakings as aforesaid are not filed within a period of one month from today, we make it clear that it will be open for the respondents to initiate proceedings for eviction of the petitioners on the basis of the impugned notice;

(vi) We make it clear that we have made no adjudication on the present structural status of the buildings and all contentions of the parties are left open;

(vii) Rule is made partly absolute on above terms.

(M.S. SONAK, J)

(A.S. OKA, J)