

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION (L) NO. 3327 OF 2017

Kawajit Singh Chambyal and ors. ... Petitioners.  
V/s.

Municipal Corporation of Greater  
Mumbai and ors. ... Respondents.

Mr. A.G. Damle, Sr. Advocate a/w. Mr. Sandeep D. and Mr. Prakash  
Mahadik for the Petitioners.

Mr. A.Y. Sakhare, Sr. Advocate a/w. Ms Vandana Mahadik for Respondent  
Nos.1 and 2.

Mr. Sameer Walimbe a/w. Mr. Sachin S. Tigde for Respondent No.3.

CORAM : A.S. OKA AND M.S. SONAK, JJ.

DATE : 20TH DECEMBER 2017.

PC.:

1] Heard learned senior counsel appearing for the petitioners, the learned senior counsel appearing for the 1<sup>st</sup> and 2<sup>nd</sup> respondents and learned counsel appearing for the 3<sup>rd</sup> respondent.

2] Perused the order dated 30<sup>th</sup> November 2017, which records that the impugned report of Technical Advisory Committee (TAC) is not in compliance with the decision of this Court in the case of ***Municipal Corporation of Greater Mumbai vs. State of Maharashtra***<sup>1</sup>. After having perused the report, we find that the TAC has not carried out tests which are contemplated by clause (d) (ii) of paragraph 9 of the said decision.

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1 2014 SCC Online Bom. 666

3] In view of the opinion expressed by the Court, the learned senior counsel appearing for the 1<sup>st</sup> and 2<sup>nd</sup> respondents states that the TAC can be directed to consider the entire issue afresh in the light of the decision of this Court referred above. Learned counsel appearing for the 3<sup>rd</sup> respondent states on instruction that this Court may adopt the said course.

4] Hence, we dispose of this petition by passing following order:

a] We hold that the report of the TAC, a copy of which is annexed as Exhibit-N to the petition, is not in compliance of the directions issued by this Court in case of *Municipal Corporation of Greater Mumbai vs. State of Maharashtra (supra)* and therefore, on the basis of the said report, notice under Section 354 of the Mumbai Municipal Corporation Act, 1888 dated 10<sup>th</sup> August 2017 cannot be implemented as of today;

b] We direct the 1<sup>st</sup> respondent to again refer the case to the TAC. The TAC shall abide by the directions contained in clause (d) (ii) of para 9 of the aforesaid decision. We make it clear that the TAC is bound to ensure that all the tests which are set out in sub-clause (ii) of clause (d) of paragraph 9 are conducted, unless for the reasons which may be recorded in the report, the TAC comes to the conclusion that some of the tests are not necessary;

c] We direct the TAC to submit a fresh report to the 1<sup>st</sup> respondent within a period of six weeks from the date on which this

judgment and order is uploaded;

d] After the report is submitted, the 1<sup>st</sup> respondent shall take appropriate decision on the said report and decide whether notice dated 10<sup>th</sup> August 2017 deserves to be implemented;

e] The decision taken by the Municipal Corporation shall be communicated to the petitioners as well as to the 3<sup>rd</sup> respondent. Till date of communication of the said decision to the petitioners, action of demolition on basis of notice dated 10<sup>th</sup> August 2017 (Exhibit-F to the petition) shall not be taken subject to the condition of the petitioners filing in this Court within a period of four weeks from today undertakings stating that they will continue to occupy the premises in their respective possession at their own risk. The undertakings to further state that in the event of collapse of the building or any part of the building, they will be solely responsible for the loss or damage which may be caused to any third party. If the undertaking are not furnished as aforesaid within a period of four weeks from today, the protection shall cease to apply;

f] In the event the Municipal Corporation decides to implement the notice after considering the report of TAC, the aforesaid protection will continue to apply for a period of three weeks from the date on which the decision is communicated to the petitioners;

g] We make it clear that we have made no adjudication on the structural status of the building. All issues are kept open to be decided by the TAC and the Municipal Corporation;

h] Rule is partly made absolute to the aforesaid extent;

i] All concerned to act on an authenticated copy of this order.

(M. S. SONAK, J.)

(A.S.OKA, J.)