

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 434 OF 2016

M/s. Ami & Monika Developers ... Petitioners.
V/s.
The Municipal Corporation of Greater
Mumbai and ors. ... Respondents.

WITH
NOTICE OF MOTION NO. 554 OF 2017
IN
WRIT PETITION NO. 434 OF 2016

Mr. Sanjiv Sawant a/w. Mr. Heramb Kadam, Ms Saloni Ghule and Ms Juliee Ghadge i/b Himanshu Kode for the Applicant/Petitioner.
Ms Vandana Mahadik for the Respondent – BMC.
Mr.A.L. Patki, Addl. GP for the Respondent – State.
Mr. Nagarsheth Giri S. Kumar for Respondent Nos. 7 and 8.
Mr. Ajit Tamhane a/w. Mr. Ashish Ghadge and Mr. Rohan Tamhane i/b Tamhane and Co for Respondent Nos.1 4 to 16.

CORAM : A.S. OKA AND M.S. SONAK, JJ.
DATE : 22ND DECEMBER 2017.

PC.:

1] The learned counsel appearing for the petitioner states that the petitioner is not pressing prayer clause (a) of Writ Petition No. 434 of 2016 as the report of the Technical Advisory Committee (TAC) of 10th August 2017 is not in compliance with the directions contained in clause (d) (ii) of paragraph 9 of the judgment of this Court in the case of *Municipal Corporation of Greater Mumbai vs. State of Maharashtra and ors.*¹

1 2014 SCC Online 666

2] We have perused the said report. Sub-clause (ii) of clause (d) of paragraph 9 of the said decision directs the TAC to conduct several tests which are mentioned therein. It is crystal clear from the said direction that either the tests are required to be conducted by the TAC itself or by appointing an expert. Perusal of the report dated 10th August 2017 shows that the TAC has referred to Structural Audit Reports submitted by the petitioner as well as the tenants. The TAC has itself not conducted any tests. If TAC is not equipped to conduct the tests as directed by the Court, it was open for the TAC to appoint appropriate expert to conduct the tests. The TAC cannot rely upon the tests conducted by the experts appointed by the contesting parties. That is not permissible in terms of the directions issued in the aforesaid decision.

3] The learned counsel appearing for the petitioner on instructions states that in the event the TAC is ordered to conduct a fresh exercise and in the event the TAC desires to engage any expert for conducting the tests, the petitioner is prepared to bear the costs and expenses of such expert.

4] The learned counsel appearing for the Municipal Corporation submits that time may be granted to her to take instructions. We are not granting time for two reasons. Firstly, the TAC appointed by the Municipal Corporation has not complied with the directions in the aforesaid decision. The directions were invited at the instance of Municipal Corporation itself. As observed earlier, the report of TAC dated 10th August 2017 shows that the tests as contemplated by sub-clause(ii) of clause (d) of paragraph 9 of the said decision have not been conducted by the TAC itself or by an

expert appointed by the TAC. Moreover a direction is already issued by a Division Bench of this Court on 1st September 2017 to the TAC to take fresh decision. The said order has not been complied with. There is one more reason why we are not granting time to the Municipal Corporation. The reason is that it is the allegation of the petitioner that the building is in a dangerous condition which may collapse. Though we are not accepting the said contention as we cannot record any finding as regards the structural status of the building, considering the said allegation, it will be appropriate if the TAC does the exercise of conducting tests and thereafter the Municipal Corporation decides what course of action should be taken on the basis of earlier notices issued under Section 354 of the Mumbai Municipal Corporation Act, 1888 (MMC Act).

5] Considering the discussion made above, the prayer clause (b) made in Notice of Motion No. 554 of 2017 by the applicants, who are the respondent Nos.5,9,12,15,16, 18 and 20 in Writ Petition will have to be granted by permitting them to file undertakings in terms of the order dated 4th May 2016.

6] The learned counsel appearing for the petitioner opposes the prayer for restoration of the electricity and water connection which is made in the said notice of motion.

7] The entire petition is founded on the footing that there are valid notices issued under Section 354 of the MMC Act. The prayer in this petition is for issuing a writ of mandamus for enforcing the notices by

pulling down the building in question. The petitioner has given up the said prayer after knowing that the notices are incapable of being executed as the report of the TAC is *per se* defective. If notices under Section 354 of the MMC Act cannot be implemented, the persons in occupation cannot be evicted. So long as they are not evicted, they are entitled to uninterrupted supply of water and electricity to the premises in question. Therefore, a direction will have to be issued to restore the water and electricity supply. This direction will be subject to the right of the Municipal Corporation to take further action on the basis of that report which may be submitted by the TAC.

8] Hence, we dispose of the petition and Notice of Motion No. 554 of 2017 by passing following order:-

a] We direct the Municipal Corporation to refer the case to TAC. As this order is not likely to be made available till January 2018, we direct the Municipal Corporation to refer the case to TAC even before this order is uploaded;

b] We accept the statement made by the petitioner that in the event TAC wants to appoint an expert to conduct the tests, the petitioner will bear the expenses and charges. We direct the TAC to comply with the directions contained in clause (d) of paragraph 9 of the decision of this Court in case of *Municipal Corporation of Greater Mumbai vs. State of Maharashtra (supra)*. The TAC shall submit a fresh report as expeditiously as possible and preferably within a period of six weeks from today;

c] On receipt of the report, the Municipal Corporation shall take appropriate decision on the question of implementation of notices earlier issued under Section 354 of the MMC Act. In the event the Municipal Corporation decides to implement the notices, advance notice in writing of at least 15 days shall be given to the parties to the petition as well as other occupants of the building. Along with notices, the decision taken by the Municipal Corporation and a copy of the report of TAC shall be forwarded;

d] The prayer clauses (a) and (b) of Notice of Motion No. 554 of 2017 are granted. Time to file undertaking is extended till 15th January 2018. The copies of undertakings shall be furnished by the advocate for the applicants in the notice of motion to the advocate for the petitioner. In the event, the undertakings are not filed within stipulated time, it will be open for the petitioner to move this Court for appropriate reliefs;

e] On a formal application being made by the occupants of the building to the concerned authorities, the electricity and water supply to the relevant part of the building shall be immediately restored. The restoration of electricity and water supply will not create any equity in favour of the occupants and the same will be subject to the order which may be passed by the 1st respondent-Municipal Corporation;

f] We make it clear that we have made no adjudication on the present structural status of the building in question;

g] The petition and the notice of motion are disposed of on above terms.

(M. S. SONAK, J.)

(A.S.OKA, J.)