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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.20 OF 2018

Vaikunthrai @ Yogendra
Amritlal Bhatt ...Petitioner
vs.
Municipal Corporation of
Greater Mumbai and others ...Respondents

Ms Mamta Sadh a/w Mr.Abbas Zaidy i/b Zohair H. Zaidy
for the Petitioner
Ms Vandana Mahadik for the respondent Nos.1 and 2
Mr.R.M.Haridas for respondent No.3

CORAM : A.S.OKA, &
P.N.DESHMUKH,JJ.
DATE : JANUARY 5, 2018

P.C.:

. Not on board. Taken on board.

1 Heard the learned counsel appearing for the petitioner, the learned counsel for the respondent Nos.1 and 2 and the learned counsel for the respondent No.3. Forthwith taken up for final disposal.

2 The respondent No.1-Mumbai Municipal Corporation after finding that there were reports of the structural consultants giving conflicting opinions on the structural status of the subject building referred the matter to the Technical Advisory Committee. As per the directions contained in the decision of a Division Bench of

this Court in the case of the Mumbai Municipal Corporation Vs State of Maharashtra¹ in sub-clause (ii) of clause (d) of paragraph 9 of the Judgment, the Technical Advisory Committee is required to conduct several tests. The report of the Technical Advisory Committee is produced for perusal of the Court by the learned counsel for the respondent Nos.1 and 2. Perusal of the report shows that the Technical Advisory Committee has not conducted any of the tests specified in sub clause (ii) of clause (d) of paragraph 9 of the said decision. There is no finding recorded that there was no necessity to conduct the tests recorded in clause 2. Faced with this difficulty, the learned counsel for the respondent Nos.1 and 2 on instructions states that the Technical Advisory Committee will submit a fresh report. She submits that the Technical Advisory Committee will have to appoint expert agency to conduct various tests. The learned counsel for the petitioner and the learned counsel for the respondent No.3 on instructions state that the petitioner and the respondent No.3 will share the cost and expenses of the consultant/expert which may be appointed by the Technical Advisory Committee. We accept the said statement.

3 So long as the report of the Technical Advisory Committee is not received, obviously no action can be taken on the basis of the impugned notice.

1 2014 SCC Online Bombay 666

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

(I) We direct the Technical Advisory Committee to submit a fresh report after following directions contained in clause (d) of paragraph 9 of the aforesaid decision;

(II) It will be open for the Technical Advisory Committee to appoint expert/consultant for carrying out various tests. The petitioner and the respondent No.3 shall deposit the necessary amount with the Mumbai Municipal Corporation as and when called upon to do so;

(III)The Technical Advisory Committee shall submit a fresh report as expeditiously as possible and in any event within a period of eight weeks from today;

(IV)After considering the report of the Technical Advisory Committee, appropriate decision shall be taken by the appropriate Authority of the Mumbai Municipal Corporation on the issue of implementing the notice issued under section 354 of the Mumbai Municipal Corporation Act,1888;

(V) A copy of the order made on the basis of the report of the Technical Advisory Committee and a copy of the report of the Technical Advisory Committee shall be served to the petitioner and the respondent No.3 as well as all other occupants of the subject building;

(VI) If the Mumbai Municipal Corporation decides to implement the notice under section 354 of the said Act of 1888, no further action shall be taken for a period of 15 days from the date on which the copy of the order of the Mumbai Municipal Corporation along with the report of the Technical Advisory Committee is served to the petitioner. In such a event, it will be open for the petitioner to file a fresh petition for challenging the impugned notice as well as subsequent order and the report of the Technical Advisory Committee;

(VII) We direct the petitioner to file an undertaking in this Court within a period of three weeks from today stating therein that the petitioner will continue to occupy the premises in his possession at his own risk. Undertaking to further state that in the event of any collapse of the building or any part thereof, the petitioner will be responsible for the said loss which may be caused to any third party;

(VIII) On the failure of the petitioner to file such undertaking within a period of three weeks from today, the Registry shall forthwith place the petition before this Bench for passing consequential order;

(IX) We make it clear that we have made no adjudication on the structural status of the building in question and all issues in that behalf will have to be decided by the Mumbai

Municipal Corporation and the Technical
Advisory Committee;

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

(P.N.DESHMUKH,J.)

(A.S.OKA,J.)