

Jsn

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

WRIT PETITION NO. 602 OF 2018

Nalin Kumar Ramdas Sampat & Ors. ... Petitioners
Versus
The Mumbai Municipal Corporation & Ors. ... Respondents

Mr. Karl Tamboly, with Deepa Pohuja, i/b M/s. J. Law Associates
for Petitioner.

Ms. Pallavi Thakar, for Respondent – BMC.

Mr. Bipin Joshi, for Respondent No.3.

**CORAM: A.S. OKA AND
RIYAZ I. CHAGLA, JJ.**
DATED: 19TH MARCH 2018.

PC:-

1. Heard the learned counsel appearing for the Petitioner, the learned counsel appearing for the first and second Respondents and the learned counsel appearing for the third Respondent.
2. Notice for final disposal was issued on 7th March 2018. Accordingly, the Petition is taken up for final disposal.
3. The first prayer in this Petition under Article 226 of the Constitution of India is for seeking a Writ of Mandamus directing implementation of notice dated 23rd June 2015 issued by the first Respondent Municipal Corporation. A notice has been issued under Section 354 of the Mumbai Municipal Corporation Act, 1888 directing demolition of the subject building on the ground that the

building is in a ruinous and dangerous condition and is likely to fall. In fact on the same date, identical notices were issued to various occupants of the building.

4. At earlier stage, the matter had come up before this Court at a Writ Petition was filed being Writ Petition No.1795 of 2015. The order dated 6th June 2016 passed in the said Writ Petition records that the parties to the Petition agreed that the Technical Advisory Committee ought not to have declined to give opinion on the structural status of the building. This Court, therefore, directed Technical Advisory Committee (in short "TAC") to submit its opinion in terms of the the directions issued by this Court in the case of ***Municipal Corporation of Greater Mumbai v. State of Maharashtra & Ors.***¹. Thereafter, the said Writ Petition was disposed of on the ground that the same involves disputed questions of fact. It appears that after the order dated 5th June 2017 was passed in the Petition filed by the third Respondent, TAC held a meeting on 10th August 2017 and submitted a report, a copy of which is annexed to this Petition. By way of an amendment, the Petitioners have challenged the said report. The opinion of the TAC is that the building is repairable.

5. On the earlier occasion, the learned counsel appearing for

1 (2014) 6 Bom. CR 860.

the Petitioners pointed out that the TAC has not conducted tests which are laid down in sub clause 2 of clause (d) of paragraph 9 of the aforesaid decision in the case of ***Municipal Corporation of Greater Mumbai (Supra)***. We find that TAC relied upon reports submitted by different structural consultants appointed by the contesting parties. In fact, TAC has not conducted any test as directed by the aforesaid decision. TAC merely observed it does not feel necessary to appoint any other structural consultant.

6. Perusal of the report of TAC which is impugned in this Petition shows that TAC has not conducted any of the tests set out in sub clause 2 clause (d) of paragraph 9 of the aforesaid decision of this Court. TAC has also not recorded any reasons as to why the tests laid down have not been conducted. All that TAC has purportedly done is refer to the four different reports of the structural consultants submitted by the contesting parties. TAC has not made its own assessment of the structural status of the building which could have been made by conducting necessary tests. If TAC was not equipped to conduct necessary tests, TAC could have always appointed structural consultant. However, TAC has recorded that there is no need to appoint a structural consultant.

7. Thus, we find that report of the TAC is completely contrary

to aforesaid decision of this Court and therefore, now TAC will have to conduct the entire exercise afresh in the light of the directions issued by this Court.

8. It is obvious that the notices dated 23rd June 2015 cannot be acted upon unless TAC submits a fresh report.

9. Accordingly, we pass following order:-

(a) We direct the TAC to submit a fresh report in the in the light of observations made in the judgment and order as expeditiously as possible and in any event within a period of two months from today;

(b) After TAC submits its report, the appropriate authority of the Mumbai Municipal Corporation will apply its mind to the report of TAC and will take a decision whether notices dated 23rd June 2015 need to be implemented;

(c) The appropriate decision shall be taken by the Municipal Corporation within a period of three weeks from the date on which a copy of the report of the TAC is received by the Municipal Corporation;

(d) The decision of the Municipal Corporation along with a copy of the report of TAC shall be served to all concerned

parties including the Petitioners and the third Respondent;

(e) The decision taken by the Municipal Corporation shall not be acted upon for a period of three weeks from the date on which copies of the decision along with report of TAC are served to the Petitioners and third Respondent; and

(f) We make it clear that we had made no adjudication on the present structural status of the building and the said issue is left to the decision of TAC and Municipal Corporation.

(g) Writ Petition is disposed of accordingly.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)