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

WRIT PETITION (L) NO. 562 OF 2018

Devdas Anantrai Daspai & Ors. ... Petitioners
Versus
Municipal Corporation of Gr. Mumbai & Ors. ... Respondents

Mr. R.D. Soni, i/b Ram & Co. for the Petitioners.
Ms. K.H. Mastankar & Ms. Pallavi Thakar for Respondent – BMC.
Mr. P.M. Shah, with Ms. Payal Sethia & Mr. Dishang Shah for
Respondent No.5.

**CORAM: A.S. OKA AND
RIYAZ I. CHAGLA, JJ.**
DATED: 27TH FEBRUARY 2018.

PC:-

1. Yesterday, when this Petition was called out, the learned counsel appearing for the Mumbai Municipal Corporation on instructions made a statement that the Corporation will refer the case to Technical Advisory Committee (for short “TAC”). We accept said statement. In view of this statement it is obvious that now the Mumbai Municipal Corporation (the said Corporation) cannot act upon impugned notices dated 18th October 2017 and 7th September 2017 issued in exercise of power under Section 354 of the Mumbai Municipal Corporation Act, 1888 (for short “the said Act”).

2. After TAC submits a report, the said Corporation will have to take a decision after considering the report of TAC on the question whether it is necessary to implement the impugned notices.

3. It will be proper to direct the Petitioners to file undertakings stating that they will continue to reside in their respective premises at their own risk and that in case of fall of the building or any part thereof, they will be solely responsible for damage which may be caused to third parties.

4. In view of the statement made on behalf of the Mumbai Municipal Corporation, we pass the following order:-

(a) We direct the said corporation to refer the case to TAC at the earliest;

(b) TAC shall carry out all the requisite tests as directed in clause (d) of paragraph 9 of the decision of a Division Bench of this Court in the case of ***Mumbai Municipal Corporation Vs. State of Maharashtra and Others***¹;

(c) If the TAC is of the view that some of the tests as

¹(2014) SCC online Bombay 666

directed in clause (d) are not necessary to be conducted, TAC shall assign reasons for the said opinion. TAC shall submit a report about the structural status of the building to the said Corporation within a period of six weeks from the day when this order is uploaded;

- (d) After the report is submitted, appropriate authority of the Mumbai Municipal Corporation shall take a decision as regards implementation of the impugned notice issued under Section 354 of the said Act;
- (e) If the said Corporation is of the view that the impugned notices directing demolition of the building are required to be implemented, specific order to that effect shall be passed and shall be communicated to the Petitioners and all the occupants of the building along with a copy of report of TAC;
- (f) Action of demolition shall not be taken within a period of three weeks from the date on which such order is communicated to the Petitioners and all occupants of the building;
- (g) Needless to add that till TAC submits a report and said Corporation takes a decision on the basis of the said report, the impugned notice shall be implemented subject to condition of the Petitioners

filing undertakings that they will continue to reside in their respective premises at their own risk and that in case of fall of the building or any part thereof, they will be solely responsible for damages which may be caused to third parties;

- (h) This protection will cease to apply on the failure of Petitioners to file undertaking within a period of four weeks from today;
- (i) We make it clear that we have made no adjudication on the present structural status of the building and the said issue is left to the decision TAC and the said Municipal Corporation;
- (j) The Writ Petition is disposed of in the above terms.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)