

pmw

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.730 OF 2018

Mr. Anil Aggarwal and Ors. ... Petitioners
Vs.
Municipal Corporation of Greater Mumbai and Ors. ... Respondents

Mr. Pradeep Thorat i/by Mr. Bipin J. Joshi for the petitioners.
Mr. R.S. Apte, Senior Counsel a/w Ms. Shital Mane for the Respondent – BMC.
Mr. N.C. Thakkar, Senior Counsel a/w Mr. M.P Rao, Senior Counsel and Mr. Piyush M. Shah for the Respondent Nos.4 and 5.

**CORAM : A.S. OKA &
RIYAZ I. CHAGLA, JJ.**

DATE : 27th MARCH, 2018

PC.

1 The learned counsel appearing for the first, second and third respondents states that the third respondent – Technical Advisory Committee (for short “TAC”) will reconsider the issue of structural status of Wings A, B, C and E of the subject building and will submit a fresh report to the appropriate authority of the first respondent – Municipal Corporation. We accept the said statement.

2 The challenge in this Petition under Article 226 of the Constitution of India is to the report of TAC dated 30th January, 2018

and the notice dated 18th July, 2016 under Section 354 of the Mumbai Municipal Corporation Act, 1888.

3 As TAC has agreed to reconsider its report, it is not necessary to entertain this Petition. It is obvious that after a fresh report is submitted by TAC in respect of A, B, C and E Wings of the subject building, the Municipal Corporation will have to decide whether notice dated 18th July, 2016 which is impugned in this Petition deserves to be implemented in respect of A, B, C and E Wings. The decision will have to be communicated to the petitioners and other occupants of the said wings.

4 The petitioners have submitted undertakings in terms of order dated 7th March, 2018. the said undertakings will continue to bind the petitioners as per the directions issued in this order.

5 Hence, we pass the following order :-

ORDER

- (i) We accept the statements made by the learned counsel appearing for the first to third respondents, on instructions, that TAC (third respondent) will reconsider the issue of structural status of A, B, C and E Wings of

the subject building and will submit a fresh report within a period of one month from today;

- (ii) The appropriate authority of the first respondent will consider the report and take a decision whether the notice dated 18th July, 2016 (Exhibit – D to the Petition) needs to be implemented in respect of A, B, C and E Wings of the subject buildings;
- (iii) The decision taken by the first respondent – Municipal Corporation along with copy of the report of the TAC shall be communicated to the petitioners and all other occupants of A, B, C and E Wings. If the decision of the Municipal Corporation is to act upon the notice dated 18th July, 2016, the action on the basis of the notice dated 18th July, 2016 shall not be taken for a period of three weeks from the date on which the decision is communicated to the present petitioners. We make it clear that till that date, the petitioners will continue to be bound by the undertakings furnished by them in terms of the order dated 7th March, 2018;
- (iv) We make it clear that the TAC will consider all the relevant issues including the issue whether it was necessary for M/s. Shashank Mehendale and Associates

appointed by the Municipal Corporation to conduct all the tests which are required to be carried out in terms of Sub-Clause (d) of Clause (ii) of paragraph 9 of the decision of this Court in the case of *Municipal Corporation of Greater Mumbai Vs. State of Maharashtra and Ors.*¹;

- (v) We make it clear that we have not dealt with conclusions recorded by the TAC in the impugned report as regards Wing – D inasmuch as it has been held that Wing – D can be repaired and there is no challenge in this Petition to the said conclusion;
- (vi) We make it clear that we have made no adjudication on the structural status of the A, B, C and E Wings of the building and the issue is left open to be decided by the TAC and the Municipal Corporation.
- (vii) The Petition is disposed of on above terms.

(RIYAZ I. CHAGLA, J)

(A.S. OKA, J)

1 (2014) SCC Online Bom. 666.