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

WRIT PETITION NO. 917 OF 2018

Kalawati Harijivandas Bhuta & Ors. ... Petitioners
Versus
Municipal Corporation of Greater Mumbai & ... Respondents
Ors.

Mr. Kunal Bhanage, for the Petitioners.
Mr. J. Reis, Senior Counsel with Ms. Vandana Mahadik for the
Respondent – BMC.
Mr. Raj Patel & Mr. Sunny Punamiya i/b SSP Legal & Co. for
Respondent No.3.

**CORAM: A.S. OKA AND
RIYAZ I. CHAGLA, JJ.**
DATED: 26TH MARCH 2018.

PC:-

1. Rule.
2. The Advocate on record for the first and second Respondents waive service. The Advocate on record for third Respondents waives service. Considering the narrow controversy involved in the Petition, the same is forthwith taken up for final disposal.
3. The challenge in this Petition under Article 226 of the Constitution of India is to the notices dated 14th September 2017 and 23rd February 2018 issued by the first Respondent Municipal Corporation in exercise of powers under Section 354 of the

Mumbai Municipal Corporation Act, 1988 (for short “the said Act”). The notice dated 23rd February 2018 makes a reference to the report of Technical Advisory Committee (TAC) and the conclusions drawn by TAC in the meeting held on 29th January 2018. Notice records that TAC unanimously opined that the building subject matter of this Petition is not habitable and needs to be vacated and demolished immediately under the supervision of a structural consultant. The notice dated 14th September 2017 which is also impugned under the Petition proceeds on the footing that the building is in a ruinous condition.

4. When this Petition came up before this Court on 8th March 2018, this Court made a *prima facie* observation after the perusal of the report dated 29th January 2018 of TAC that the structural consultant appointed by TAC has not carried out all the tests which are required to be carried out in terms of a decision of a Division Bench of this Court.

5. Today, a report dated 23rd March 2018 submitted by Shashank Mehendale & Associates, structural consultants to the designated officer is tendered across the bar. The report shows that two more tests were conducted by Shashank Mehendale & Associates. Obviously, the report dated 23rd March 2018 has not

been considered by TAC. The learned Senior Counsel appearing for the Municipal Corporation states that TAC will consider the report dated 23rd March 2018 and will submit a fresh report.

6. Report dated 23rd March 2018 has been submitted by the structural auditor appointed by TAC, as earlier the said structural consultant had not conducted all the tests which are required to be conducted as per the law laid down by the Division Bench and therefore, after the report of 29th January 2018, he has carried out two further tests.

7. Therefore, it is obvious that the decision making process adopted by TAC is completely flawed as the expert appointed by TAC did not conduct all the tests which are required to be conducted as per the decision of the Division Bench of this Court in the case of ***Municipal Corporation of Greater Mumbai Vs. State of Maharashtra & Ors***¹. Two remaining tests as contemplated by sub clause (2) of clause (d) of paragraph 9 of the said decision have been conducted after TAC submitted the report.

8. As the notice dated 23rd February 2018 is based on the report of TAC of 29th January 2018, action of demolition cannot

1 (2014) 6 Bombay Case Reporter 860.

be taken on the basis of a said report.

9. TAC will have to now submit a fresh report after considering the report dated 23rd March 2018 submitted by M/s. Shashank Mehendale & Associates. It follows that an opportunity of dealing with the said report will have to be given to the Petitioners and the third Respondent before TAC submits a fresh report.

10. Accordingly we pass following orders:-

a) We direct TAC to submit a fresh report in the light of discussion made in this judgment as expeditiously as possible and preferably within a period of one month from today;

b) After the report is submitted, the appropriate authority / officer of the first Respondent will consider the fresh report of TAC and will take a decision whether the impugned notices need to be implemented. Appropriate officer / authority of the Municipal Corporation will take appropriate decision within a period of one month from the date of which TAC submit its report;

c) The decision taken by the first Respondent on the basis of fresh report of TAC shall be communicated to the Petitioners as well as to the third Respondent;

d) If a decision is taken by the Municipal Corporation to implement the impugned notices, the said decision shall not be acted upon for a period of three weeks from the date on which the decision is communicated to the Petitioners.

e) Till the expiry of period of three weeks as aforesaid, the undertakings given by the Petitioners shall continue to bind the Petitioners;

f) In the event, Municipal Corporation decides to implement the impugned notices, it will be open for the Petitioners to adopt appropriate proceedings in accordance with law, for challenging the impugned notices as well as the fresh report of TAC;

g) We make it clear that we have made no adjudication on the present structural status of the subject building and all questions are left to the decision of TAC as well as the Municipal Corporation.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)