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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2750 OF 2015**

M/s. Stumbha Art Printers and Ors. ... Petitioners
Vs.
Municipal corporation of Gr. Bombay and Ors. ... Respondents

**WITH
WRIT PETITION NO.2701 OF 2015**

HIMS Botawalla Charities and Ors. ... Petitioners
Vs.
Municipal corporation of Gr. Bombay and Ors. ... Respondents

**WITH
CHAMBER SUMMONS Nos.33 OF 2016, 34 OF 2016,
31 OF 2016, 36 OF 2016, 171 OF 2017, 173 OF 2017,
CHSW(L) NO.167 OF 2015 AND RA No.785 OF 2015**

Ms. Deepa Chawan and Ms. Reshmarani Nathani and Ms. Kirtika S. Kothari i/by N.N. Vaishnawa & Co. for the Petitioners in WP/2750/2015 and for Respondent Nos.5 to 11 in WP/2701/2015.

Mr. Firoz Bharucha i/by Daphtary Ferreira & Divan for Petitioner in WP/2701/2015.

Mr. Ketan Dhavale for Intervenor.

Ms. Vandana Mahadik for Respondent – BMC in both Petitions.

**CORAM : A.S. OKA &
P.N. DESHMUKH, JJ.**

DATE : 2nd FEBRUARY, 2018

P.C.

1 Both the Petitions are forthwith taken up for final disposal. In Writ Petition No.2750 of 2015, the substantive challenge is to the notice dated 7th March, 2015 issued by the Mumbai Municipal Corporation under Section 354 of the Mumbai Municipal Corporation Act, 1888 (for short “the said Act”) in respect of buildings described as Calcutta Confectionery and Sitladevi Industrial Estate. The notice proceeds on the footing that the buildings are in ruinous condition and therefore, the same need to be vacated and pulled down immediately. In the said Petition, to the affidavit filed by Shri Kirankumar B. Annamwar on behalf of the Mumbai Municipal Corporation, another notice dated 21st June, 2014 has been relied upon which is in respect of a portion of the buildings. Even the said notice proceeds on the footing that the building is required to be pulled down.

2 In Writ Petition No.2701 of 2015, the challenge by the petitioners is to the report of Technical Advisory Committee (for short “TAC”) dated 21st April, 2015 and consequential communications dated 8th June, 2015 and 15th July, 2015. The other substantive prayer is for issuing a writ of mandamus enjoining the Municipal Corporation to pull down the building as per the notice dated 7th March, 2015.

3 The learned counsel appearing for the Mumbai Municipal Corporation on instructions states that considering the defects in the report of TAC dated 21st April, 2015, the report will be withdrawn and TAC will submit a fresh report. Communication dated 15th July, 2015 was issued by the Municipal Corporation on the basis of the report of TAC for the purposes of implementing the recommendations of TAC.

4 As the report of TAC is being withdrawn, obviously no further action can be taken on the basis of the said report. As the Municipal Corporation has agreed to refer the matter to TAC, obviously none of the notices issued under Section 354 of the Mumbai Municipal Corporation (notices dated 21st June, 2014 and 7th March, 2015) can be implemented now.

5 It appears from the notices that there are two buildings subject matter of the notices. It is obvious that as there is more than one building, TAC will have to consider the structural status of each building separately before recording conclusions one way or the other. Needless to add that TAC shall be bound by the directions issued in clause (d) of paragraph 9 of the decision of the Division Bench of this Court in the case of the *Municipal Corporation of Greater Mumbai Vs. State of Maharashtra and Ors.*¹.

1 (2014) 6 Bom. C.R. 860

6 After TAC submits report, the appropriate authority of the Mumbai Municipal Corporation will have to apply its mind to the contents of the report and decide whether the notices dated 21st June, 2014 and 7th March, 2015 can be acted upon. Needless to add that it will be also open for the Municipal Corporation to issue a fresh notice under Section 354 of the said Act after considering the report.

7 Hence, we dispose of both the Petitions by passing the following order :-

ORDER

- (i) We accept the statement made by the learned counsel appearing for the Mumbai Municipal Corporation that report of TAC dated 21st April, 2015 stands withdrawn. Hence, the communications dated 8th June, 2015 and 15th July, 2015 which are subject matter of challenge in Writ Petition No.2701 of 2015 cannot be acted upon;
- (ii) We direct TAC to conduct necessary tests in the light of the directions issued by this Court in the case of *Municipal Corporation of Greater Mumbai Vs. State of*

Maharashtra and Ors. and submit a fresh report as expeditiously as possible and in any event within a period of two months from today;

- (iii) In view of reference to TAC, till a fresh report is submitted by TAC and appropriate authority of the Mumbai Municipal Corporation takes appropriate decision, notices dated 21st June, 2014 and 7th March, 2015 shall not be acted upon;
- (iv) Within a period of one month from the date on which the report of the TAC is submitted, appropriate authority of the Municipal Corporation shall take appropriate decision after considering the report of TAC;
- (v) The decision taken by the Municipal Corporation shall be communicated to the parties to the Petition along with copies of report of TAC. If the Municipal Corporation comes to the conclusion that notices dated 21st June, 2014 and 7th March, 2015 need to be acted upon, a specific communication to that effect shall be issued by the Municipal Corporation to the parties to the Petitions. We make it clear that actual

action on the basis of the said notices or any other decision taken by the Municipal Corporation on the basis of the report of the TAC shall not be taken for a period of three weeks from the date on which the decision is communicated to the parties to the Petition;

- (vi) We make it clear that we have made no adjudication on the disputed question of structural condition/ structural status of the buildings subject matter of these petitions and all the issues are left to be decided by the TAC and the Municipal Corporation;
- (vii) We make it clear that those who are aggrieved by the decision which will be taken by the Municipal Corporation on the basis of the report of TAC are free to file appropriate proceedings in accordance with law;
- (viii) After TAC submits report, if the application made by some of the parties under Section 499 of the said Act is still pending, it will be open for the Municipal Corporation to decide the same in accordance with law;

- (ix) The undertakings given by the concerned petitioners shall continue to operate for a period of three weeks from the date on which the appropriate decision taken by the Municipal Corporation on the basis of the report of TAC is communicated to the concerned petitioners;
- (x) The Petitions are disposed of on above terms;
- (xi) All pending Chamber Summons do not survive and the same are disposed of.

(PN. DESHMUKH, J)

(A.S. OKA, J)