

Sharayu Khot.

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

WRIT PETITION NO. 2164 OF 2014

Gopal C Pujari & Ors.

...Petitioners

Versus

**Municipal Corporation of Greater
Mumbai & Ors.**

...Respondents

Mr. Amogh Singh a/w Mr. D.P. Singh, i/by Anil D. Yadav, for
the Petitioners.

Ms. K.H. Mastakar, for the Respondents No. 1 and 2-BMC.

Mr. A.R. Mishra a/w Mr. Abhijit Singh and Ms. Priyanka
Lokhande, for the Respondent No. 3.

**CORAM : ABHAY S. OKA AND
RIYAZ I. CHAGLA, JJ.**

DATE : 4 July 2018

ORDER :

1. Considering the nature of controversy involved in

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this Petition, the same is forthwith taken up for final disposal.

2. By this Petition under Article 226 of the Constitution of India, the Petitioners, who are claiming to be in possession of the tenements in the subject building described in paragraph 1 of the Petition, have challenged the orders dated 18th October 2013 and 3rd April 2014. The order/notice dated 18th October 2013 is issued by the 1st Respondent-Municipal Corporation in exercise of powers under Section 354 of the Mumbai Municipal Corporation Act, 1888 (for short "*the said Act*"). The said notice proceeds on the footing that the subject building is in ruinous condition which is likely to fall. Therefore, by the said notice, the owners were called upon to demolish the said building. The said impugned order dated 3rd April 2014 is addressed to all the occupants of the building as well as to the 3rd and 4th Respondents. The said order is in the nature of a reminder to comply with the notice dated 18th October 2013.

3. One of the grounds of challenge is based on the

notice dated 6th July 2013 issued by the 1st Respondent-Municipal Corporation under Section 354 of the said Act in respect of the subject building. By the said notice, the 3rd Respondent/Owner was called upon to carry out the repairs to the building. The submission is that on 6th July 2013, the 1st Respondent-Municipal Corporation was of the view that the building could be repaired and there is no explanation as to why on 18th October 2013, there was a change of opinion and the 1st Respondent-Municipal Corporation called upon the owner to demolish the building. Though a direction was issued on 13th February 2018 to the 1st Respondent-Municipal Corporation to explain as to how within a period of three months, the structural status of the building underwent a change, notwithstanding the grant of time, the 1st Respondent-Municipal Corporation has not filed any Reply. The Petitioners are relying upon the structural audit report of the year 2013. On 10th April 2014, while issuing the notice, this Court granted *ad-interim* relief subject to conditions incorporated therein and therefore, the building has not been demolished. On one hand, the 1st Respondent-

Municipal Corporation has not placed on record any material to justify the action of issuing the notice dated 18th October 2013. On the other hand, the 3rd and 4th Respondents are contending that the building is in a dilapidated condition and is likely to fall.

4. As stated earlier, the *ad-interim* order which prevents the action of demolition continues to operate for more than four years. Therefore, it will be appropriate if the Municipal Corporation makes a fresh assessment for deciding the structural status of the building as of today. Hence, the Petition need not be kept pending.

5. We dispose of the Petition by passing the following order:-

- (i) It will be open for the Petitioners as well as the 3rd and 4th Respondents to submit the structural audit report to the Designated Officer

of the concerned Ward within a period of four weeks from the date on which this order is uploaded;

- (ii) Whether such reports are submitted or not, after expiry of four weeks from the date on which this order is uploaded, the 1st Respondent shall make assessment of the structural status of the subject building in accordance with law. If the structural audit reports are submitted within the stipulated period of four weeks, the Municipal Corporation is bound to consider the same;
- (iii) Within a maximum period of three months from today, the 1st Respondent-Municipal Corporation shall complete the structural assessment of the subject building in accordance with law and will take a decision whether the impugned notices are required to be

implemented, considering the present structural status of the building;

(iv) If the Municipal Corporation comes to the conclusion that the impugned notices are required to be implemented, a fresh notice to that effect shall be served to the Petitioners and other occupants of the building. If such fresh notice is served, actual action of demolition shall not be taken for a period of 15 days from the date of service of the notice to the Petitioners;

(v) We direct that unless the Municipal Corporation makes a fresh assessment of the structural status as directed above, the impugned notices shall not be acted upon subject to condition of the Petitioners abiding by the conditions incorporated in the *ad-interim* order dated 10th April 2013;

- (vi) We make it clear that no adjudication is made on the present structural status of the building and all issues are left open to be decided by the Municipal Corporation;
- (vii) The Writ Petition is disposed of on the above terms.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]