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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2215 OF 2013**

Ramniklal Dwarkadas Desai and Ors. ... Petitioners
Vs.
Municipal Corporation of Greater Mumbai and Ors. ... Respondents

Mr. P.M Shah for the Petitioners.
Ms. Vandana Mahadik for the Respondent – BMC.
Mr. Kunal Bhanage for the Respondent Nos.3 and 4.

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

DATE : 23rd JULY 2018

P.C.

1 Heard the learned counsel appearing for the petitioners, the learned counsel appearing for the third and fourth respondents and the learned counsel appearing for the first and second respondents. By notice dated 11th February 2011 issued by the first respondent – Municipal Corporation under Section 354 of the Mumbai Municipal Corporation Act, 1888 (for short “the said Act”), the Municipal Corporation called upon repairs to be carried out to the subject building. The said notice records that owner /occupier has to arrange alternate accommodation to the tenants as per prevailing laws and as per the rights of tenants. The third respondent who is one of the owners of the building challenged the said notice by filing a suit in the City

Civil Court. It is not in dispute that there is no ad-interim relief granted by the City Civil Court. The learned counsel appearing for the third and fourth respondents on instructions states that repairs have been carried out to the subject building by the third and fourth respondents. However, the order dated 14th February 2018 passed by this Court records that the Municipal Corporation submitted a report dated 27th November 2017 of the Designated Officer recording that as per the structural audit report, building needs urgent repairs. The learned counsel appearing for the petitioner disputes the correctness of the statement that repairs have been carried out by the third and fourth respondents.

2 Ultimately, it is for the Municipal Corporation to ascertain whether compliance is made with the notice dated 11th February 2011. If compliance is not made by the third and fourth respondents, the Municipal Corporation will have to initiate appropriate action in accordance with law.

3 Accordingly, we pass the following order :-

ORDER

- (i) We direct the Designated Officer of the concerned ward or any other officer/officers to immediately visit the

subject building with a view to ascertain whether necessary repairs in terms of the notice dated 11th February 2011 have been carried out. If the concerned officer finds that repairs have been carried out, the said officer will also ascertain whether with the passage of time any further repairs are required to be carried out. Needless to add that if the officer finds that repairs have not been carried out in terms of the said notice, the Municipal Corporation shall initiate appropriate action in accordance with law for enforcement of the said notice;

- (ii) We direct the Designated Officer to take action as aforesaid and to communicate to the petitioner the action taken in writing within a period of two months from today;
- (iii) Petition is disposed of with the above directions;
- (iv) We make it clear that we have made no adjudication on the present structural status of the building.

(RIYAZ I. CHAGLA, J)

(A.S. OKA, J)