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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1080 OF 2015

Municipal Corporation of Greater Mumbai … Petitioner
Vs.
The State of Maharashtra and Ors. … Respondents

WITH

NOTICE OF MOTION NO.394 OF 2017

Bai Velbai Velji Bhimji Charitable Trust & Ors. … Applicants/ Interveners

In the matter of

Municipal Corporation of Greater Mumbai … Petitioner
Vs.
The State of Maharashtra and Ors. … Respondents

Mr. A.Y. Sakhare, Senior Counsel a/w Ms. K.H. Mastakar and Ms. Vandana Mahadik for the Petitioner.
Mr. Abhinav Chandrachud i/by Mr. Shailendra J. Singh for the Applicants.
Ms. Uma Palsule - Desai, AGP for the Respondent – State.

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

DATE : 28th FEBRUARY, 2018

ORAL JUDGMENT (Per A.S. Oka, J.)

1 The submissions were heard on the earlier date. This is a Writ Petition filed by the Municipal Corporation of Greater Mumbai which has been established under the provisions of the Mumbai

Municipal Corporation Act, 1888 (for short “the said Act of 1888”). Though the Petition relates to a specific building which is described in paragraph 4(i) of the Writ Petition which has been admittedly demolished during the pendency of this Petition, the Municipal Corporation has invited the attention of the Court to several difficulties faced by it while implementing the provisions of Section 354 of the said Act of 1888 and other related provisions. The difficulties are pointed out especially when the Municipal Corporation exercises the power under Section 354 of the said Act of 1888 by directing the demolition of a building in dilapidated/ruinous condition which cannot be repaired.

2 Before we advert to various provisions, we may refer to various orders passed by Division Benches of this Court from time to time. The material order is dated 23rd June 2014 which is passed by a Division Bench of this Court on the basis of the minutes of the order taken on record and marked 'X' for identification. Several interim directions have been issued by the said order. It is this interim order which is operative and which is being implemented by the petitioner – Municipal Corporation. The directions issued in the said order are not confined only to the subject building but the same generally apply to exercise of powers by the petitioner – Municipal Corporation under Section 354. Paragraph 8 of the order dated 23rd June 2014 records that

to ensure that powers under Section 354 of the said Act of 1888 can be exercised effectively, it is necessary to issue certain guidelines. Paragraph 9 contains the said guidelines. After this Petition was placed before various Benches of this Court, ultimately on 15th January 2015 the Division Bench of this Court observed that the Petition was kept pending as the Court was informed that the Municipal Corporation was in the process of taking a major policy decision and the same has not been taken. By the said order, parties were put to notice that the Petition will be taken up for final hearing.

3 There is an affidavit filed by Shri Vishvas Venkatrao Shankarwar dated 8th February 2018. In paragraph 1 of the affidavit, he has stated that the petitioner – Corporation has framed guidelines for declaring private and municipal buildings as falling in 'C-1' category (Dangerous/ Unsafe). The said guidelines have been approved by the Municipal Commissioner. On the last date, the learned Senior Counsel appearing for the Municipal Corporation tendered across the Bar a note dated 22nd February 2018 signed by the Director, (E.S.& P.) and Chairman of the Technical Advisory Committee (TAC) appointed under the interim orders of this Court. The said note refers to three suggestions for the modifications in the policy approved by the Municipal Commissioner. The note records that two suggestions can be

accepted and third suggestion cannot be accepted. The said note has been approved by the Municipal Commissioner on 23rd February 2018. Thus, the policy annexed to the affidavit dated 8th February 2018 stands amended to the extent provided in the said note dated 22nd February 2018.

4 We have perused the said policy which lays down an elaborate procedure to be followed before issuing a notice under Section 354 of the said Act of 1888. In this Petition, we are not called upon to go into the question of legality and validity of the contents of the said policy. But suffice it to say that policy as amended on 23rd February 2018 by the Municipal Commissioner is binding on the Municipal Corporation.

5 The necessity of passing interim order dated 23rd June 2014 was the absence of a policy or guidelines. That is very clear from the observations made in the paragraph 8 of the said order. In view of the policy guidelines which are placed on record by the affidavit dated 8th February 2018 as modified on 23rd February 2018 now it is no longer necessary for this Court to exercise Writ Jurisdiction by issuing policy guidelines. We may make a useful reference to the decision of the Apex Court in the case of *Census Commissioner & Ors. vs. R. Krishnamurthy*[1].

1. (2015) 2 SCC 796

In paragraph 25 of the said decision, the Apex Court reiterated the well settled legal position that it is not within the domain of the Court to legislate and it is the function of the Courts to interpret the law by adopting certain creative process. In paragraph 25, the Apex Court observed thus :-

> "25. Interference with the policy decision and issue of a mandamus to frame a policy in a particular manner are absolutely different. The Act has conferred power on the Central Government to issue notification regarding the manner in which the census has to be carried out and the Central Government has issued notifications, and the competent authority has issued directions. It is not within the domain of the court to legislate. The courts do interpret the law and in such interpretation certain creative process is involved. The courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. **The court may also fill up the gaps in certain spheres applying the doctrine of constitutional silence or abeyance. But, the courts are not to plunge into policy-making by adding something to the policy by way of issuing a writ of mandamus. There the judicial restraint is called for remembering what we have stated in the beginning. The courts are required to understand the policy decisions framed by the executive. If a policy decision or a notification is arbitrary, it may invite the frown of Article 14 of the Constitution. But when the notification was not under assail and the same is in consonance with the Act, it is really unfathomable how the High Court could issue directions as to the manner in which a census would be carried out by adding certain aspects. It is, in fact, issuance of a direction for framing a policy in a specific manner.**"
>
> (Emphasis added)

6 Therefore, in the light of the policy guidelines adopted by the said Corporation, it will not be appropriate for this Court to add to the policy or to amend the said policy especially when this Court is not called upon to decide the legality and validity of the policy.

7 However, certain submissions were made on the interpretation of the provisions of the said Act of 1888 and therefore, the same will have to be considered.

8 Section 354 of the said Act of 1888 reads thus :

> **"354. Removal of structures, etc., which are in ruins or likely to fall.**
>
> (1) If it shall at any time appear to the Commissioner that any structure (including under this expression any building, wall or other structure and anything affixed to or projecting from, any building, wall or other structure) is in a ruinous condition, or likely to fall, or in any way dangerous to any person occupying, resorting to or passing by such structure or any other structure or place in the neighborhood thereof, the Commissioner may, by written notice, require the owner or occupier of such structure to pull down, secure or repair such structure, [subject to the provisions of section 342] and to prevent all cause of danger therefrom.
>
> (2) The Commissioner may also if he thinks fit, require the said owner or occupier, by the said notice, either

forthwith or before proceedings to pull down, secure or repair the said structure, to set up a proper an sufficient hoard or fence for the protection of passers by and other persons, with a convenient platform and handrail, if there be room enough for the same and the Commissioner shall think the same desirable, to serve as a footway for passengers outside of such hoard or fence.

(3) If it shall appear to the Commissioner that any building is dangerous and needs to be pulled down under sub-section (1), the Commissioner shall call upon the owner, before issuing notice thereunder, to furnish a statement in writing signed by the owner stating therein the names of the occupiers of the building known to him or from his record, the area in occupation and location of premises in occupation, possession of each of the respective occupiers or tenants, as the case may be.

(4) If he fails to furnish the statement as required by sub-section (3) within the stipulated period, then the Commissioner shall make a list of the occupants of the said building and carpet area of the premises in their respective occupation and possession alongwith the details of location.

(5) The action taken under this section shall not affect the inter-se rights of the owners or tenants or occupiers, including right of re-occupation in any manner.

Explanation. - For the purposes of this section, "the tenant" shall have the same meaning as assigned to it in clause (15) of section 7 of the Maharashtra Rent Control Act, 1999."

9 We are dealing with a 1888 statute. Our attention was invited to similar provisions under the Maharashtra Municipal Corporations Act, 1949 (for short "the said Act of 1949"). Section 264 of the said Act of 1949 deals with the power to remove the structures which are in ruinous condition and are likely to fall. Section 264 reads thus:-

"264. Removal of structures, etc. which are in ruins or likely to fall -

(1) If it shall at any time appear to the Designated Officer that any structure (including under this expression any building wall, parapet, pavement, floor, steps, railings, door or window frames or shutter or roof, or other structure and any thing affixed to or projecting from or resting or any building, wall, parapet or other structure) is in a ruinous condition or likely to fall, or in any way dangerous to any person occupying, resorting to or passing by such structure or any other structure or place in the neighbourhood thereof, the Designated Officer may, by written notice, require the owner or occupier of such structure to pull down, secure, remove or repair such structure or thing or do one or more of such things and to prevent all cause of danger therefrom.

(2) The Designated Officer may also, if he thinks fit, require the said owner or occupier by the said notice, either forthwith or before proceeding to pull down, secure, remove or repair the said structure or thing, to set up a proper and sufficient hoard or fence for the protection

of passers by and other persons, with a convenient platform and hand-rail if there be room enough for the same and the Designated Officer shall think the same desirable to serve as a footway for passengers outside of such hoard or fence.

(3) If it appears to the Designated Officer that the danger from a structure which is ruinous or about to fall is imminent, he may, before giving notice as aforesaid or before the period of notice expires, fence off, take down, secure or repair the said structure or take such steps or cause such work to be executed as may be required to arrest the danger.

(4) Any expenses incurred by the Designated Officer under sub-section (3) shall be paid by the owner or occupier of the structure.

(5) (a) Where the Designated Officer is of opinion, whether on receipt of an application or otherwise, that the only or the most convenient mean by which the owner or occupier of a structure such as is referred to in sub-section (1) can pull down, secure, remove or repair such structure, is by entering any of the adjoining premises belonging to some other person the Designated Officer after giving such person a reasonable opportunity of stating any objection may, if no such objection is raised or if any objection which is raised appears to him invalid or insufficient, by an order in writing authorise the said owner or occupier to enter such adjoining premises.

(b) Every such order bearing the signature of the Designated Officer shall be a sufficient authority to the person in whose favour it is made, or to any agent to person employed by him for this purposes, after giving to the owner of the premises reasonable written notice of his intention so to do, to enter upon the said premises with assistants and workmen, at any time between sunrise and sunset, and to execute the necessary work.

(c) In executing any work under this section, as little damage as can be, shall be done to the adjoining owner's property and the owner or occupier of premises

for the benefit of which the work is done, shall --

(i) cause the work to be executed with the least practicable delay;

(ii) pay compensation to any person who sustains damage by the execution of the said work."

10 Another provision of the said Act of 1949 which is relevant is Section 268 which confers power on the Municipal Commissioner to vacate any building in the circumstances which are covered by Sub-Sections (1) and (2) of Section 268 reads thus :-

"268. Powers of Commissioner to vacate any building in certain Circumstances

Power to vacate premises

(1) Notwithstanding the provisions of any other law to the contrary the Commissioner may, by written notice, order any building or any portion thereof to be vacated forthwith or within the time specified in such notice, --

(a) if such building or portion thereof has been unlawfully occupied in contravention of section 263;

(b) if a notice has been issued in respect of such building or part thereof requiring the alteration or reconstruction of any exiting staircase, lobby, passage or landing and the works specified in such notice have not been commenced or completed;

(c) if the building or part thereof is in a ruinous or dangerous condition within the meaning of section 264.

(2) In every such notice the Commissioner shall clearly specify the reasons for requiring such building or portion thereof to be vacated.

(3) The affixing of such written notice on any part of such promises shall be deemed a sufficient intimation to the occupiers of such building or portion thereof.

(4) On the issue of a notice under sub-section (1), every person in occupation of the building or portion thereof of

which the notice relates shall vacate such building or portion as directed in the notice and no person shall so long as the notice is not withdrawn enter the building or portion thereof except for the purpose of carrying out any work which he may lawfully carry out.

(5) The Commissioner may direct that any person who acts in contravention of sub-section (4) shall be removed from such building or part thereof by any police officer.

(6) The Commissioner shall, on the application of any person who has vacated any premises in pursuance of a notice under sub-section (1), reinstate such person in the premises on the withdrawal of such notice, unless it is in his opinion impracticable to restore substantially the same terms of occupation by reason of any structural alteration or demolition.

(7) The Commissioner may direct the removal from the said premises by any police officer of any person who obstructs him in any action taken under sub-section (6) and may also use such force as is reasonably necessary to effect entry in the said premises."

(underline supplied)

11 One of the cases covered by Sub-Section (1) is a case of a building which is in ruinous or dangerous condition within the meaning of Section 264. In such a case, the Municipal Commissioner is empowered by a notice to call upon the occupants to vacate the building forthwith or within the time specified in the notice. Sub-Section (4) of Section 268 of the said Act of 1949 enjoins every person in occupation of the building or portion thereof of which the notice relates to vacate the building or portion as directed in the notice and no such person can enter the building or portion thereof except for the purpose of carrying out any work which he may lawfully carry out. Sub-

Section (5) is very material which empowers the Commissioner to issue a direction that any person who acts in contravention of Sub-Section (4) shall be removed from such building or part thereof by any police officer. Sub-Section (7) provides that the Commissioner may direct any police officer to remove any person who acts in contravention of Sub-Section (4). It was sought to be pointed out that there is no similar provision in the said Act of 1888 which confers a power on the Municipal Commissioner to remove a person in possession for facilitating demolition of the building and that also with the police help.

12 It is in this context that a reference will have to be made to various other provisions of the said Act of 1888. Firstly, we make a reference to Section 489 which reads thus :-

> "489. Works, etc. which any person is required to execute may in certain cases be executed by the Commissioner at such person's cost.
>
> (1) When any requisition or order is made, by written notice by the Commissioner or by any municipal officer empowered under section 68 in this behalf, under any section, sub-section or clauses of this Act mentioned in sub-section (2), a reasonable period shall be prescribed in such notice for carrying such requisition or order into effect, and if, within the period so prescribed, such requisition or order or any portion of such requisition or order is not complied with the Commissioner may take such measures or cause such work to be executed or such thing to be done as shall, in his opinion be necessary for giving due effect to the requisition or order so made; and, unless it is this Act otherwise expressly provided, the expenses thereof shall be paid by the person or by any one of the persons to whom such requisition or order

was addressed.

(2) The sections, sub-sections and clauses of this Act referred to in sub-section (1) are the following, namely :-

Section 230, sub-section (5)	Section 274A, sub-sections (1) and (2).]
Section 231.	Section 278.
Section 232.	Section 305.
Section 233, clause (b).	Section 308, sub-section (2)
Section 223A, clause (b)	Section 309, sub-section (1)
Section 243, sub-section (2)	Section 311.
Section 248, sub-section (1)	Section 315.
Section 249A.	Section 325.
Section 257.	Section 326, sub-section (3)
Section 271, sub-section (2).	Section 327, sub-section (1), clause (d).
Section 272, sub-section (5).	Section 328, sub-section (3).
Section 274, sub-section (1) and (1A).	Section 328A, sub-section (3).
Section 329, sub-section (1).	Section 377.
Section 334, sub-section (1).	Section 377A.
Section 338, sub-section (2).	Section 380.
Section 352.	Section 381.
Section 353.	Section 381A, sub-section (2).
Section 354.	Section 382.
Section 363, sub-sections (1), (2), (3) and (4).	Section 383, sub-section (1).
Section 375.	Section 392, sub-section (1).
Section 375A.	Section 405.
Section 376.	Section 425, sub-section (1).

(3) The Commissioner may take any measure, execute any work or cause anything to be done under this section, whether or not the person who has failed to comply with the requisition or order is liable to punishment or has been

> prosecuted or sentenced to any punishment for such failure."
>
> (underline supplied)

13 Section 489 applies when a requisition or an order is made by a written notice by the Commissioner or any Municipal officer empowered under Section 68 of the said Act of 1888. The said Section empowers the Commissioner to take such measures or cause such work to be executed or such thing to be done as shall, in his opinion be necessary for giving due effect to the requisition or order so made. The said power can be exercised when the requisition set out in an order which provides for a reasonable period for compliance is not complied with. Sub-Section (2) specifically refers to Section 354. Power under Sub-Section (1) can be exercised when an order is made by the Commissioner or an officer appointed by the Commissioner under any Section, Sub-Section or Clauses in the said Act mentioned in Sub-Section (2) thereof. Therefore, there is a power vesting in the Commissioner to take such measures or cause such work to be executed or such thing to be done as shall, in his opinion be necessary for giving due effect to the requisition or order so made. Sub-Section (1) of Section 489 will apply to a case where a written order made under Section 354 of the said Act of 1888 for vacating and demolishing a building is not complied with within the time provided thereunder or if no time is provided, within reasonable time.

14 At this stage, we may make a useful reference to the decision of the Apex Court in the case of *Makarand Dattatreya Sugavkar Vs. Municipal Corporation of Greater Mumbai and Ors.*[1]. The Apex Court in the said decision had an occasion to consider the scope and scheme of the provisions of Section 354 of the said Act of 1888. This was a case where the appellant before the Apex Court filed a Writ Petition under Article 226 of the Constitution of India seeking a writ of mandamus against the Commissioner of the said Corporation to get damaged portion of the said flat repaired. A notice was issued by the said Corporation under Section 354 to the Chairman/ Secretary of the Society in which the appellant's flat was situated. The society was called upon to repair the flat within a period of two months. This Court rejected the prayer for grant of writ of mandamus but granted opportunity to the appellant before the Apex Court to take appropriate proceedings before the Co-operative Court. In paragraph 17 onwards the Apex Court considered various provisions of the said Act mainly Section 354 and 489 which we have quoted above.

15 The Apex Court also referred to Sections 490, 491 and 499. In paragraph 19, the Apex Court held thus :-

> "19. A careful reading of Sections 354 and 489 shows that if the Commissioner is satisfied that any structure is in a ruinous condition or likely to fall or is in any way

1 (2013) 9 SCC 136

> dangerous to any person occupying, resorting to or passing by such structure or any structure or place in the neighbourhood thereof, then he can require the owner or occupier of such structure to pull down, secure or repair the same and to prevent cause of danger therefrom."

16 In paragraph 20 onwards, the Apex Court considered the question whether the provisions of Section 354 are mandatory or directory. In paragraph 20, the Apex Court held thus :-

> "20. Although, most of the abovementioned provisions are intended to benefit the public at large, some of them are also meant for the benefit of private individuals. The primary object underlying Section 354 is to safeguard the public from the danger of being forced to live in a structure, which includes any building, wall or other structure and which is in a ruinous condition or is likely to fall or is in any way dangerous to any person occupying the same. This section is also intended to protect those who may pass by such structure. A reading of the plain language of Section 489 gives an impression that it is only an enabling provision but if the same is read keeping in view the purpose of its enactment and the setting in which it is placed, it becomes clear that the Commissioner is duty-bound to ensure that the written notice given to the owner or occupier under Section 354(1) is implemented in its letter and spirit. The duty cast upon the Commissioner is in the nature of a public law obligation and in appropriate case, the court can issue direction for its enforcement."
>
> (underline supplied)

17 Thus, in so many words, the Apex Court held that the Municipal Commissioner is duty bound to ensure that the written notice given to the owner or occupier under Sub-Section (1) of Section 354 is implemented in its true letter and spirit. In fact, the Apex Court further

held that the duty cast upon the Commissioner is in the nature of a public law obligation and therefore, in appropriate cases, the writ Court can issue a writ of mandamus enjoining the Municipal Corporation to implement the notices under Section 354 in its true letter and spirit. Perusal of paragraph 21 to paragraph 24 shows that the Apex Court held that in a case where notice under Section 354(1) is not complied with, it is the mandatory obligation of the Commissioner to take recourse to power under Section 489.

18 There is a Division Bench decision of this Court in the case of *Tadeshwar Wadi Co-operative Housing Society Ltd. Vs. State of Maharashtra and Ors*.[1]. Even in this decision what came up for consideration before this Court was a Writ Petition wherein a writ of mandamus was sought enjoining the Municipal Corporation to take an action under Section 354 of the said Act of 1888. Paragraphs 13 and 14 of the said decision read thus :-

> "13. No doubt, sub-section (1) merely authorises the Commissioner to give written notice requiring the owner or occupier of the structure to pull down, secure or repair such structure subject to provisions of section 342 of the Act and to prevent all cause of danger therefrom. It does not expressly mention about the power of the Corporation to enter upon such building or to remove the same. The question is: whether there are other enabling provisions empowering the Commissioner or the officials of the Corporation to take the notice issued

1 2013 (2) Mh.L.J. 681

under section 354 to its logical end. In the case of M/s Whiz Enterprises (supra), the Division Bench directed the Corporation to take the notice issued under section 354 of the said Act to its logical end in accordance with law forthwith. On the same lines, the petitioners are inviting directions against the Corporation in the present petition.

14. Counsel for the Corporation, however, attempted to distinguish this decision on the argument that the observations contained in this unreported decision cannot be treated as binding precedent as it does not refer to the crucial aspect that section 354, by itself, does not provide for any further power to the Corporation to forcibly evict the occupants of the building and demolish the building merely because it has become dilapidated and dangerous, unlike the provisions contained in section 488-A of the Act, which provision is limited to notices under section 354-RE, 378-C or 378-F of the Act."

(underline supplied)

19 Therefore, it appears to us that a specific contention was raised by the Municipal Lawyer before this Court that Section 354 by itself does not provide for any further power to the Corporation to forcibly evict the occupants of the building and demolish the building. In the said decision, the Division Bench made a reference to Section 61 which incorporates mandatory duties of the Municipal Corporation. One of the mandatory duties as provided in clause (l) of Section 61 is of securing or removal of dangerous buildings and places. Therefore, in the light of the said mandatory duty it can be said that when the law confers a power under Section 354 on the Municipal Corporation to issue a notice for demolition of dangerous and ruinous buildings, it is

coupled with a mandatory duty to ensure that the structure which is in ruins or is likely to fall is removed. Paragraph 18 is a ratio of the said decision which reads thus :-

> "18. Considering the setting in which the provisions are placed and the purport of those provisions, we have no manner of doubt that even though the primary obligation is on the owner and occupier to act upon the requisition of the Corporation issued under section 354 of the Act in relation to the structure in ruins or likely to fall, but that does not extricate the Corporation from its duty to remove such structure in public interest at the earliest. In doing so, the Corporation may have to resort to eviction of the occupants but that drastic action would be of a far lesser degree than the loss or damage to be caused in the neighborhood on account of sudden collapse of the dilapidated and dangerous building. Indeed, in the unreported decision in M/s. Whiz Enterprises Pvt. Ltd. (supra), the efficacy of these provisions has not been specifically dealt with. However, for the reasons already noted, we have no hesitation in taking the view that the petitioner – Society is justified in seeking direction against the Corporation for its inaction to take successive notices issued under section 354 of the said Act to its logical end by removing the dilapidated and dangerous structure referred to therein. For facilitating the officials of the Corporation to discharge this duty, we have no manner of doubt that the police authorities would extend adequate logistical support to them, if so demanded and as may be warranted, which is the obligation of the police authorities under section 522 of the Act."
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> (underline supplied)

20 Thus, the Division Bench after considering the scheme of Section 354 and on conjoint reading of the provisions of Sections 354 and 489 held that for implementing the notice of demolition under

Section 354(1), the Municipal Corporation has a power to resort to eviction of the occupants of the building.

21 On conjoint reading of Sections 354 and 489, it appears to us that when the Municipal Corporation issues a notice under Sub-Section (1) of Section 354 in respect of a building which is classified as 'C1' which requires immediate demolition and when such notice is not implemented by the owner or occupier within a reasonable period or within the period provided in the notice, the Municipal Commissioner is under an obligation to take such measures or cause such work to be executed or such thing to be done as shall, in his opinion, be necessary for giving due effect to the requisition in the notice issued under Section 354(1). Therefore, in a case where the owner or occupier of a structure does not comply with the notice under Sub-Section (1) of Section 354 calling upon him to remove or demolish the structure after expiry of the period provided in the notice or if no such period is provided, after expiry of a reasonable time from the date of service of notice, the Municipal Commissioner is under an obligation to take the notice under Sub-Section (1) of Section 354 to its logical conclusion, if necessary, by taking recourse to eviction of the occupants as held in the aforesaid decision in paragraph 18 thereof.

22 The other aspect pointed out by the learned Senior Counsel appearing for the Mumbai Municipal Corporation is that there is no specific provision under the said Act of 1888 wherein the Municipal Commissioner can ensure that Police help is available for evicting the persons for taking the notice under Sub-Section (1) of Section 354 of the said Act of 1888 to its logical conclusion. According to us, the Municipal Commissioner is not helpless. Sub-Section (1) of Section 522 can be taken recourse to in such a case, which reads thus :-

> "522.Co-operation of Police.
>
> (1) The Police Commissioner shall, as far as may be, co-operate, by himself and through his subordinates, with the Commissioner [and the General Manager] for carrying into effect and enforcing the provisions of this Act and for the maintenance of good order in [Brihan Mumbai].
>
> (2) It shall be the duty of every police officer in [Brihan Mumbai] to communicate without delay to the proper municipal officer any information which he receives of a design to commit or of the commission of any offence against this Act or against any regulation by by-law made under this Act, and to assist the [Commissioner, the General Manager] or any power vesting in the [Commissioner, the General Manager] or in such municipal officer or servant under this Act."

23 Sub-Section (1) mandates that Police Commissioner shall, as far as may be, co-operate, by himself or through its subordinates, with the Municipal Commissioner for carrying into effect and enforcing the provisions of this Act. Thus, it is the duty of every Police officer in

Mumbai to assist the Commissioner or any Municipal Officer/servant, when his aid is demanded for enforcing the provisions of the said Act of 1888.

24 Therefore, if the Municipal Commissioner or the officer to whom powers of the Commissioner are delegated is required to exercise the powers under Section 489 of removing the persons in occupation of a building, it is the obligation of the Police Commissioner or a Police Officer to help the Commissioner for carrying into effect and enforcing the provisions of Sections 354 and 489 and also to ensure that good order is maintained while the notice under Section 354 is being enforced by the Corporation by taking recourse to Section 489. When the Commissioner or any other Municipal officer demands aid from the Police Officer for lawful exercise of any power vesting in the Commissioner or the said Municipal Officer, it is the duty of every Police officer to assist the Commissioner or the officer nominated by him.

25 There is one more statutory provision dealing with the duty of the Police. The provision is Section 47 of the Maharashtra Police Act, 1950 (for short “the said Act of 1950”). Section 47 reads thus :-

> “47. Employment of additional Police on application of a person.
>
> (1) The Commissioner or District Superintendent may, on the application of any person, depute any additional

> number of Police to keep the peace, to preserve order or to enforce any of the provisions of this or any other Act in respect of any particular class or classes of offences or to perform any other Police duties at any place in the area under his charge.
>
> (2) Such additional Police shall be employed at the cost of the person making the application, but shall be subject to the orders of the Police authorities and shall be employed for such period as the appointing authority thinks fit.
>
> (3) If the person upon whose application such additional Police are employed shall at any time make a written requisition to the appointing authority to which the application for the employment of additional Police was made, for the withdrawal of the said Police, he shall be relieved for the cost thereof at the expiration of such period not exceeding one month from the date of the delivery of such requisition, as the State Government or the appointing authority, as the case may be, shall determine."

On plain reading of sub-Section (1) of Section 47, on the application of any person, the Police Commissioner is empowered to depute any additional number of Police to keep the peace, to preserve order or to enforce any of the provisions of the said Act of 1950 or any other Act in respect of any particular class or classes of offences or to perform any other Police duties at any place in the area under his charge. Sub-Section (2) provides for payment of cost of additional police employed by the person making the application. The learned Senior Counsel appearing for the Mumbai Municipal Corporation stated that in practice whenever Police assistance is taken by the Municipal

Officers for enforcing the provisions of the said Act of 1888 or the Maharashtra Regional and Town Planning Act, 1966, the Police require payment of cost which is being paid by the Municipal Corporation. In a case, where a Municipal Officer requires Police aid for lawful exercise of powers vesting in the said Act of 1888, in view of Sub-Section (1) and (2) of Section 522 of the said Act of 1888, it is the obligation of the officer in-charge of the Police Station to provide Police aid as may be necessary in the facts of the case. We do not see any requirement in the provisions of the said Act of 1888 and in particular Section 522 which permits the State Government to recover cost of Police force when the presence of police force is required to aid the Municipal officers for the lawful exercise of powers vesting under the said Act of 1888. This is a matter which should be taken up by the Municipal Commissioner with the Police Commissioner or the State Government so that the burden on the exchequer of the Municipal Corporation can be reduced.

27 Needless to add that the Commissioner of Police will have to issue necessary directions to the officers in-charge of all Police Stations within the limits of the Mumbai Municipal Corporation to render police aid whenever demanded by the Municipal officers for the lawful exercise of powers under the said Act of 1888. He must also issue directions for appointing a Police Officer as a Nodal Officer who

is higher in rank so that in the event of the failure of the local police station to make available police aid, the Municipal Corporation can approach the Nodal Officer who will ensure that necessary police aid is made available. Considering the purport of Sub-Section (1) and (2) of Section 522, whenever situation demands, it will be the duty of the Police Commissioner to depute even women constables and armed constables at the site.

28 Our conclusions and the final directions are as under :

(i) We accept the statement made in the affidavit of Shri Vishvash Venkatrao Shankarwar, Assistant Commissioner (Removal of Encroachment) of the Mumbai Municipal Corporation in paragraphs 1 and 2 thereof. We make it clear that the policy guidelines dealing with 'C1' category of private and Municipal buildings stand modified to the extent provided in note dated 22nd February 2018 prepared by the Chairman of TAC which is approved on 23rd February 2018 by the Municipal Commissioner;

(ii) Needless to add that the Municipal Corporation will have to act in terms of its own policy guidelines while exercising power under Section 354 of the said Act of

1888 in respect of the buildings falling in category 'C1' which are either private or owned by the Municipal Corporation;

(iii) The directions were sought in this Petition in regard to buildings falling in 'C1' category which are either privately owned or owned by the Municipal Corporation. Therefore, it is not necessary for us to lay down any guidelines concerning category of buildings which are not falling in 'C1' category. However, it will be appropriate if the Municipal Commissioner formulates policy guidelines for exercise of powers under Section 354 of the said Act even in relation to categories falling in 'C2A', 'C2B' and 'C3';

(iv) As held earlier, if a notice issued under sub-section (1) of Section 354 of the said Act of 1888 is not complied with by the owner or occupier after the expiry of the period provided in the notice or if no such period is provided, after expiry of a reasonable time from the date of service of notice, it is the obligation of the Municipal Commissioner or the officer who is empowered to exercise the powers of the Municipal Commissioner

under Section 354 to take recourse to the provisions of sub-Section (1) of Section 489. The power conferred under Sub-Section (1) of Section 489 is also of evicting the occupants of the building which is required to be demolished;

(v) It is the obligation of the Police Commissioner of the City as well as the officers in-charge of all the Police Stations in the City to provide Police aid to the Municipal officers for exercising the power under Section 354 read with Sub-Section (1) of Section 489 of the said Act;

(vi) We direct the Police Commissioner of City of Mumbai to invite attention of various Police officers as well as the officers in-charge of all Police Stations in the City of Greater Mumbai to provisions of Section 522 of the said Act of 1888 as well as the directions issued under this order and will ensure that the Police Officers provide requisite police aid to the Municipal Officers without fail. Considering the exigencies, even female police personnel and armed police personnel shall be deputed wherever necessary;

(vii) It will be appropriate if the Police Commissioner nominates a Police officer/s of sufficiently higher rank as Nodal Officer/s to whom the Municipal officers can make a representation when the officer in-charge of the local Police Station has either denied police help or is delaying grant of police help. Such Nodal Officers shall be empowered to issue directions to the officer in-charge of the local Police Stations. The Nodal Officers shall be empowered to deal with the grievance of the Municipal Corporation regarding the failure to supply adequate police aid. The said direction shall be complied with by the Commissioner of Police within a period of one month from the date on which this judgment and order is uploaded. The office of the Government Pleader shall provide a copy of this Judgment to the officer of the Commissioner of Police. Compliance affidavit shall be filed by the office of the Commissioner of Police on this aspect on or before 30th April, 2018;

(viii) Writ Petition is disposed of with the above directions;

(ix) We make it clear that in view of the policy guidelines which are placed on record, it is not necessary for us to continue interim order dated 23rd June 2014 as the Municipal Corporation is bound to follow its own policy guidelines. Therefore, for exercising powers under Section 354 of the said Act of 1888 from the date of this Judgment, the Municipal Commissioner shall follow its own policy guidelines as the interim directions are not longer operative. We also make it clear that we have not examined the issue of legality and validity of the policy guidelines framed by the Municipal Corporation;

(x) In view of the disposal of the Petition, pending Notices of Motions and Chamber Summons are disposed of.

(RIYAZ I. CHAGLA, J) **(A.S. OKA, J)**