

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

WRIT PETITION NO. 332 OF 2014

Ashok lalji Gala and others. ... Petitioners.

V/s.

Municipal Corporation of Greater Mumbai
and others. ... Respondents.

Mr.A.G.Damle, Senior Advocate with Mr.Bhavin R. Bhatia
for the petitioners.

Ms.K.H.Mastakar for respondent Nos.1 and 2- MMC.

Mr.Sanjeev Singh for respondent Nos.3 to 6.

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

DATE : 28th March 2018.

PC.:

Heard the learned senior counsel appearing for the petitioners, the learned counsel appearing for the first and second respondents and the learned counsel appearing for the third to sixth respondents.

2. Rule has been already issued and, today, the petition is fixed for hearing as to interim relief. By consent of parties, the petition is forthwith taken up for final disposal.

3. The learned counsel appearing for the third to sixth

respondents who are claiming to be the owners of the building, on instruction, states that the said respondents have no objection if the Municipal Corporation refers the issue of structural stability of the subject building to the Technical Advisory Committee (for short "TAC"). The learned counsel appearing for the first and second respondents states that an official decision was taken to refer the case to TAC. Thereafter, the file was sent back to the Ward office for the purpose of appointing an expert. She further states that as inspection of the premises was not allowed by the occupants of the premises, further steps could not be taken.

4. Thus, it appears that as far as the respondents are concerned, there is consensus that the case deserves to be referred to TAC.

5. The challenge in this petition under Article 226 of the Constitution of India is to the order/ notice dated 9th July 2013 (Exhibit-E to the petition) whereby the Assistant Engineer (Building and Factory), P/North Ward called upon the owner of the subject building to vacate the building and to pull down the building.

6. Perusal of the record shows that there are more than two reports of the Structural Consultants. The first report is by Profiles Structural Consultants and registered Structural Auditors dated 29th June 2013. There is another report dated 25th May 2014 submitted by M/s.AT and TS Associates. There is one more report which is of the year 2005. Apparently, there appears to be conflict of opinions as far as report of 2013 and report of 2014 are concerned. The conflict of opinion is about

structural status of the building and, especially on the issue whether the building can be categorized as C-1.

7. In any case, it will be appropriate if the case is referred to TAC as the reports on record are of years 2013 and 2014.

8. The petitioners have given undertakings in terms of ad-interim order passed on 25th January 2018. By confirming the ad-interim order, a direction will have to be issued to refer the case to TAC. We are not going into the question whether the expert appointed by the Municipal Corporation was prevented entry to the premises of the subject building. However, inspection by the members of TAC and/or the expert appointed by TAC will have to be allowed.

9. Accordingly, we dispose of this petition by passing the following order:

- (i) We direct the first and second respondents to refer the matter to TAC for seeking its opinion about the present structural status of the structure of the subject building;
- (ii) Needless to add that it will be open for the TAC to conduct necessary tests. The Municipal Corporation or TAC may also appoint any expert agency to conduct the tests;
- (iii) A report shall be submitted by TAC to the concerned authority of the Mumbai Municipal Corporation within a period of three months from today;

(iv) We direct the petitioners to co-operate with TAC by allowing entry to the members of TAC as well as entry to the expert appointed by TAC for the purpose of inspection of the premises in possession of the petitioners as well as for carrying out requisite scientific tests;

(v) After the report is submitted by the TAC, the appropriate authority of the Municipal Corporation will take a decision whether the impugned order dated 9th July 2013 deserves to be implemented in the light of the report of TAC;

(vi) The decision taken by the Municipal Corporation along with a copy of the report of TAC shall be forwarded to the petitioners as well as third to sixth respondents;

(vii) If the Municipal Corporation decides to implement the impugned order dated 9th July 2013, the same shall not be implemented for a period of three weeks from the date on which the order of the Municipal Corporation along with a copy of the report of TAC is served to the petitioners;

(viii) We make it clear that if personal service of the decision of the Municipal Corporation could not be effected to the petitioners or any of them on the ground that their premises are found to be locked, it will be open for the Municipal Corporation to serve the said decision by affixing the same on the doors of the respective premises;

(ix) The undertakings given by the petitioners as per the order dated 25th January 2018 will continue to bind the petitioners till the date of communication of the decision taken

by the first respondent- Municipal Corporation to them and for a period of one month thereafter;

(x) We make it clear that we have not made any adjudication on the present structural status of the subject building and all issues are left to TAC as well as the first respondent- Municipal Corporation;

(xi) Rule is made absolute in the above terms.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)