

Sharayu Khot.

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

WRIT PETITION NO. 2851 OF 2014

Gyan Nagar Welfare Association & Anr. ...Petitioners

Versus

**The Municipal Corporation for Greater
Mumbai & Ors. ...Respondents**

Mr. H.S.S. Murthy, a/w Mr. Abhishek Patil, i/by Ms. Vrushali A. Gulwadi, for the Petitioners.

Ms. Shital Mane, for the Respondents No. 1 and 2.

Mr. A.R. Shaikh, for the Respondents No. 3 and 4.

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

DATE : 12 June 2018

ORDER :

1. The learned Counsel appearing for the Municipal

Corporation has tendered across the bar a copy of the report of Technical Advisory Committee (for short “TAC”) which is taken on record and marked as “R1” for identification. We find that TAC has not carried out any tests. We find from the report of TAC that the tests which are required to be conducted by TAC either by itself or by appointing an expert have not been conducted. TAC has merely considered the two conflicting opinions of structural consultants and has accepted the one to be correct.

2. The learned Counsel appearing for the 3rd to 8th Respondents submits that the said Respondents have no objection for sending back the matter for reconsideration of TAC. It is further stated that necessary undertakings be taken from the Petitioners. The learned Counsel appearing for the Municipal Corporation supports the report.

3. This report is of 9 May 2014. As per the directions issued by a Division Bench of this Court in the case of the

*Municipal Corporation Vs. The State of Maharashtra & Ors.*¹,

which was applicable at the relevant time, the tests which are laid down in sub-clause (ii) of clause (d) of paragraph 9 of the said decision ought to have been conducted by TAC. The report shows that TAC has not done the exercise of conducting the said tests. Therefore, the report of TAC is not at all legal.

4. Accordingly, we dispose of the Petition by passing the following order:-

- (i) We direct the 1st and 2nd Respondents to refer the case to Technical Advisory Committee (TAC). The Reference will be to enable TAC to decide the present structural status of the subject building. TAC shall submit a fresh report in accordance with law after following all the relevant guidelines framed by the said Municipal Corporation;

¹ 2014 SCC Online Bom. 666

- (ii) The report shall be submitted to the Municipal Corporation as expeditiously as possible and preferably within a period of four weeks from today;
- (iii) After receipt of the report, the appropriate Authority/Officer of the Municipal Corporation shall consider the report and take a decision whether an action under Section 354 of the Mumbai Municipal Corporation Act, 1888 deserves to be initiated;
- (iv) If the 1st and 2nd Respondents pass an order of demolition under Section 354 of the Mumbai Municipal Corporation Act, 1888 on the basis of the fresh report, the said order/notice shall be served upon the Petitioners along with a copy of the report of TAC. No action shall be taken on the basis of such notice/order for the period of

15 days from the date of service of the order along with a copy of TAC report to the 1st Petitioner;

(v) In view of the above directions, the impugned notice dated 6 November 2013 cannot be implemented. Accordingly, we direct that the said notice shall not be implemented subject to condition of all the members of the 1st Petitioner filing the Affidavits/undertakings in this Court stating that they will continue to occupy their premises at their own risk;

(vi) If such undertakings are not filed within a period of four weeks from today, it will be open for the 1st Respondent to implement the notice dated 6 November 2013;

(vii) The Writ Petition is disposed of on the above

terms;

(viii) We make it clear that we have made no adjudication for structural status of the building and all issues on that behalf are left open till the decision of the TAC and Municipal Corporation.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]