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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.1806 OF 2018**

Vijay Punjab Building No.18
Co-op. Housing Society Ltd. ... Petitioner
Vs.
Bombay Municipal Corporation and Ors. ... Respondents

Mr. S.A. Balwal I/by Vyas & Bhalwal for the Petitioner.
Ms. Druti Kapadia for the Respondent – BMC.
Mr. L.T. Satelkar, AGP for the Respondent – State.
Mr. Nikhil Patil I/by Mr. V.P. Sawant for the Respondent No.5.

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

DATE : 25th JUNE 2018

P.C.

1 Considering the limited controversy involved in this petition, the same is forthwith taken up for final disposal. By this petition under Article 226 of the Constitution of India, the petitioners have impugned the notice dated 7th May 2018 issued by the first respondent – Municipal Corporation to the occupants of building No.18 in Punjabi Colony, G.T.B. Nagar, Sion, Koliwada, Mumbai. By the said notice, the occupants of building No.18 were informed that in view of the report of Technical Advisory Committee (TAC) which is dated 5th April 2018, the building will fall in the category 'C-1' which requires immediate demolition. A copy of the order passed by the Municipal Commissioner of 23rd April 2018 directing action to be taken on the

basis of TAC report was also forwarded along with the notice dated 7th May 2018.

2 The case was placed before TAC in terms of the directions issued by this Court by order dated 1st August 2017 in WP/290/2015 and other connected matters. Notice under Section 354 of the Mumbai Municipal Corporation Act, 1888 (for short “the said Act of 1888”) was already served to the occupiers of the building. Only in the light of the order dated 1st August 2017 that a reference was made to TAC.

3 We have perused the report of TAC in relation to building Nos.16, 17, 18 and 19 which is of 5th April 2018. In paragraph 7 of the report, TAC has referred to a report of M/s. Latesh S. Sanklecha, Structural Consultants appointed by the occupants/tenants and a report of Global Engineering Service appointed on behalf of TAC by F/North Ward for carrying out structural audit of building Nos.16, 17, 18 and 19. The last part of the report is under the heading “TAC conclusion”. The report refers to submissions made by one Shri R.A.Zodage, representative of M/s. Latesh S. Sanklecha. Thereafter, the Committee has noted submissions of Shri Jayesh Gawand, representative of M/s. Creative Consultant regarding the structural status of the buildings. The Committee has referred to the results of ND tests conducted by

M/s. Creative Consultants. In the conclusions, there is no reference whatsoever to the report of Global Engineering Service. The report of the said agency appointed by TAC itself is not even referred in the conclusion part of the report.

4 The learned counsel appearing for the Municipal Corporation has tendered across the bar a file containing report of Global Engineering Service in relation to building No.18.

5 Going by the report of TAC, what was considered by the TAC in the meeting held on 5th April 2018 is the report of M/s. Creative Consultant. The learned counsel appearing for the Municipal Corporation submits that a reference to report of M/s. Creative Consultant may be a mistake. However, it cannot be a mere mistake inasmuch as the report refers to statements made by the representative of the structural consultants appointed by the occupants and it is specifically observed that Shri Jayesh Gawand, a representative of M/s. Creative Consultant appointed by the Municipal Corporation was present. In fact, one paragraph is devoted under the conclusion to what is reproduced by Shri Gawand on behalf of Creative Consultant. The earlier part of the report shows that M/s. Creative Consultant had not submitted any report in respect of the building Nos.16 to 19.

6 TAC is a body of experts. Therefore, when writ Court considers the issue of the legality and validity of opinion expressed by the body of experts, normally the issue of the correctness of the opinion cannot be gone into. However, writ Court is surely concerned with the decision making process adopted by TAC.

7 In the present case, the Municipal Corporation appointed structural consultants on behalf of TAC so that the said structural consultant can carry out requisite tests. As far as building No.18 is concerned, M/s. Global Engineering Service was the structural consultant appointed. But the report of the said agency is not considered in the meeting of TAC. The theory of mistake cannot be accepted.

8 Admittedly, M/s. Creative Consultant was appointed as structural consultants by the Municipal Corporation in respect of some other building (building Nos.11 to 15) forming part of the same colony.

9 Therefore, it is impossible to accept that there is an inadvertent mistake in the report of the TAC. We must note here that TAC was dealing with a residential building occupied by several persons and therefore, unless we are satisfied that there is proper application of

mind by TAC, action of demolition on the basis of the report cannot be upheld. In the present case, in the conclusion part of the report, there is no reference to the report and opinion of M/s. Global Engineering Service appointed by TAC itself.

10 Therefore, this is a fit case where TAC should be directed to immediately reconsider the case on the basis of the report submitted by M/s. Global Engineering Service especially when it is the contention of the Municipal Corporation that the building is in a very dangerous condition and may collapse.

11 Accordingly, we dispose of the petition by passing the following order :-

ORDER

- (i) We direct that action of demolition of building No.18 shall not be taken on the basis of the impugned notice dated 7th May 2018;
- (ii) We direct the Technical Advisory Committee (TAC) to reconsider the case of building No.18 by taking into consideration the report submitted by M/s.Global Engineering Service. TAC shall submit a fresh report as expeditiously as possible and preferably within a period of two weeks from today;

- (iii) After fresh report is submitted by TAC, in the event the Municipal Corporation is satisfied that the building falls in category 'C-1', a fresh notice shall be served to the petitioner. If there are other occupants which are not represented by the petitioner, the notice be served to such occupants as well. Action of demolition shall not be taken for a period of 7 days from the date on which notice is served as aforesaid;
- (iv) We make it clear that we have made no adjudication on the present structural status of the building and all issued are left open to be decided by the TAC and the Municipal Corporation.

(RIYAZ I. CHAGLA, J)

(A.S. OKA, J)