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

WRIT PETITION No. 2161 OF 2015

Nilima Kulkarni & Ors. ... Petitioners
Vs.
Mumbai Municipal Corporation & Anr. ... Respondents

Mr. Kunal Bhanage a/w Chetan Mhatre i/b Utangale & Co. for the
Petitioners.

Mr. J. Reis, Sr. Counsel a/w Joel Carloz & Ms. K. H. Mastakar, for the
Respondent - BMC.

CORAM : A. S. OKA, &
P. N. DESHMUKH, JJ.

DATE : FEBRUARY 21, 2018

PC :

1. Heard the learned counsel appearing for the Petitioners and the learned senior counsel appearing for the Respondent Municipal Corporation. The learned senior counsel for the Municipal Corporation relied upon a report of the Technical Advisory Committee (for short "the TAC"), a copy of which is annexed to the affidavit in reply filed in Writ Petition No. 552 of 2014. A perusal of the said report *prima-facie* shows that the TAC has not conducted any

scientific test and the report is based on the visual inspection. Only on this ground, this petition needs final hearing. Ad-interim relief is granted on 27th May, 2015 subject to Petitioners filing undertakings. The order dated 14th June, 2017 records that as per the said order, the undertakings have been filed by the Petitioners.

2. The learned senior counsel for the Municipal Corporation, on instruction, states that the case will be again referred to the TAC and till the TAC submits its report, action of demolition will not be taken on the basis of impugned notices. We accept the said statement. Thus, the impugned notices dated 15th May, 2015 shall not be acted upon. In view of these statements, writ petition need not be kept pending and is disposed of by passing the following order:

- (i) We accept the statement made on behalf of the Municipal Corporation that the impugned notices dated 15th May, 2015 will not be acted upon unless the TAC and submits a fresh report after conducting necessary tests;
- (ii) We direct that as soon as report is submitted by the TAC, the same shall be considered by the appropriate

authority of the Mumbai Municipal Corporation. If after considering the said report, the appropriate authority is of the view that subject building needs to be demolished and the Petitioners need to be evicted, fresh notices shall be served on the Petitioners and other occupants of the building alongwith a copy of the TAC report;

- (iii) The action of eviction / demolition shall not be taken for a period of three weeks from the date of service of fresh notice alongwith a copy of TAC report on the Petitioners and other occupants of the building;
- (iv) We make it clear that we have not made adjudication on the structural status of the building in question and all contentions of the parties in that behalf are kept open;
- (v) The writ petition is disposed of in the above terms.

Sd/-
[P. N. DESHMUKH, J.]

Sd/-
[A. S. OKA, J.]