

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2295 OF 2017

Mr.J.G.Damani for the Petitioners
Ms Vandana Mahadik for the respondent-MMC
Mr.Rajiv Narula i/b Jhangiani Narula & Associates

2 There is no dispute between the parties that
there was necessity of referring the matter to the
Technical Advisory Committee. We have perused the
decision of this Court in the case of Mumbai
Municipal Corporation vs. State of Maharashtra and
others¹. Certain directions issued by the Division

1 2014 SCC Online Bombay 666

Bench to the Technical Advisory Committee under sub clauses (i) and (ii) of clause (d) of paragraph 9 of the said decision read thus:

"d) The TAC shall

(i) Carry out a visual inspection of the state of the internal and external plaster, plumbing, drainage, whether the doors and windows close properly, whether steel in columns is exposed, whether there is settlement in the foundation, deflections/sagging, major cracks in columns/beams, seepages/leakages, staircase area and column condition, lift well walls, U.G.tank, O.H.tank column condition, parapet at terraces, chhajjas, common areas, terrace water proofing.

(ii) Carry out specific tests like ultrasonic pulse velocity test, rebound hammer test, half cell potential test, carbonation depth test, core test, chemical analysis, cement aggregate ratio as may be considered by TAC as necessary."

3 In view of the aforesaid directions, the Technical Advisory Committee was expected to carry out tests. Perusal of the report of the Technical Advisory Committee shows that neither the said tests have been carried out nor specific reasons have been given as to why the said tests are not necessary. The Technical Advisory Committee seems to have proceeded on the basis of the concession made or the

statements made by the Technical Consultant appointed by the petitioners. The Technical Advisory Committee was under an obligation to make its own independent assessment of the structural status of the building. Perusal of the report shows that there is no independent application of mind by the Technical Advisory Committee. Thus, the report of the Technical Advisory Committee is in breach of the directions contained in the aforesaid decision.

4 Unless the Technical Advisory Committee complies with the directions of this Court on the basis of the report of the Technical Advisory Committee, the impugned notices cannot be acted upon.

5 Therefore, we dispose of this petition by passing the following order:

(I) We hold that the report of the Technical Advisory Committee dated 25th September 2017 does not satisfy the requirements laid down by the Division Bench of this Court in the case of Mumbai Municipal Corporation vs. State of Maharashtra and others (supra). Hence, we direct the Technical Advisory Committee to comply with the directions contained in clause (d) of paragraph 9 of the aforesaid decision. The Technical Advisory Committee is under an obligation to conduct tests which are mentioned in the aforesaid directions. If the Technical

Advisory Committee is of the view that the some of the tests are not required to be carried out, the reasons for the same shall be recorded by the Technical Advisory Committee. The Technical Advisory Committee shall place a fresh report before the appropriate authority of the Municipal Corporation within a period of six weeks from the date on which this Judgment is uploaded;

(II) After considering the fresh report of the Technical Advisory Committee, the appropriate authority of the Mumbai Municipal Corporation shall take appropriate decision on the question of implementation of the impugned notice within a period of two weeks from the date on which a fresh report is submitted by the Technical Advisory Committee;

(III) If the Mumbai Municipal Corporation decides to act upon the impugned notice, written communication to that effect along with copies of the report of the Technical Advisory Committee shall be served to all concerned parties;

(IV) Actual action of removing the persons in possession and demolition shall not be taken for a period of two weeks from the date on which decision is communicated to the petitioners;

(V) Till the date of communication of the decision taken by the appropriate authority

of the Mumbai Municipal Corporation to the petitioners, the undertakings given by the petitioners in terms of the order dated 10th July 2017 will continue to operate;

(VI) We make it clear that we have made no adjudication on the structural status of the subject building;

(VII) Needless to add that it will be always open for the petitioners to appoint its own structural consultant to carry out tests;

(VIII) Writ petition is disposed of on above terms.

(P.N.DESHMUKH,J.)

(A.S.OKA,J.)