

Jsn

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

WRIT PETITION NO. 1966 OF 2016

M/s. Green Twig Estate Management Pvt. Ltd. ... Petitioners
And Ors.

Versus

Municipal Corporation of Greater Mumbai & ... Respondents
Ors.

Mr. Umesh Tiwari with Mr. Mrunal Mandhare and Mr. Aniket Jain,
I/b Trishla Yelve for Petitioners.

Ms. Shital Mane, for Respondent – BMC.

Mr. P.K. Dhakephalkar, Senior Counsel I/b Mr. Bhavin Bhatia for
Respondent Nos. 6 to 11.

Mr. P.R. Suryawanshi, I/b Mr. G.M. Savagave, for Respondent
No.14.

Mr. D.S. Chandnani, for Respondent No.15.

Mr. J. Jose, I/b M/s. Argus Partners for Respondent Nos. 12 and
13.

**CORAM: A.S. OKA AND
RIYAZ I. CHAGLA, JJ.**
DATE: 10TH AUGUST, 2018.

ORAL JUDGMENT (Per A.S. Oka, J.)

1. On the earlier date, the parties were put to notice that the
Petition will be disposed of finally at the stage of admission. That
is what is recorded in the order dated 16th July, 2018.
Accordingly, we issue Rule. The Respondents waive service. The
Petition is taken up for hearing.

2. By this Petition under Article 226 of the Constitution of India,
the challenge is to the report of the Technical Advisory Committee
(for short “TAC”) of the Respondent No.1 – Municipal Corporation.

The report is dated 29th March, 2016 on the basis of the proceedings held in the meeting of TAC. It appears that TAC came to the conclusion that the structure is repairable. On 9th May, 2016, the Municipal Commissioner of the Respondent No.1 passed an order directing that an action be taken in terms of the said report of TAC. The contention of the Petitioner is that the report of TAC is illegal in as much as TAC has not conducted any tests for deciding whether the building can be classified as 'C-1' and that only on consideration of the structural audit report submitted by the occupants / tenants and visual inspection that the TAC has come to the said conclusion. With reference to the reply filed by some of the Respondents, the learned counsel for the Petitioners submitted that the statement made regarding carrying out of the repairs to the building is not at all correct. His submission is that the Respondent No.1 – Corporation never granted any permission to carry out repairs. He submitted that the order dated 12th January, 2017 which is annexed to the Affidavit in Reply of the Respondent No.6 does not permit repairs.

3. The learned senior counsel appearing for the Respondent Nos. 6 to 11 contended that repairs have been already carried out as contended in the Affidavits filed on record. This stand of the other Respondents is the same as the Respondent Nos. 6 to 11,

who have contended that as TAC has come to a conclusion that building is repairable, repairs have been already carried out and no interference is called for.

4. We have given careful consideration to the submissions. We have perused the impugned report of TAC. In the first part of the report, TAC has given history. Thereafter, it is noted that Assistant Engineer (Building Maintenance), Executive Engineer, 'A' Ward, Junior Engineer (B and F) 'A' Ward and "Post Graduates Engineers" appointed by the Respondent No.1 visited the site on 21st March, 2016. The observations made by the said officers on visual inspection have been recorded therein. Thereafter, TAC has reproduced in brief the contents of the report submitted by structural auditor appointed by the Petitioners and the report of the structural auditor appointed by some of the Respondents. The report of the structural auditor appointed by the Petitioners records that the building falls in C-1 category which requires immediate demolition. But the structural engineer / consultant appointed by some of the tenants - Respondents classified the same as falling in C-2 category, which requires repairs. In the last part of the report, the conclusions of TAC have been recorded. We find that the opinion formed by the TAC is only on the basis of the reports of the structural consultants appointed by the parties

and visual inspection by the Municipal Officers. There are no reasons assigned as to why the opinion of the structural consultant appointed by the Petitioners that the building falls in 'C1' category is discarded. TAC has itself not conducted any of the scientific tests. It is stated in the report that the 'Post Graduates Engineers' appointed by the Respondent No.1 visited the building and made usual inspection. It is not the case made out by the Municipal Corporation that the any of the members of the team of engineers which visited the building had done specialisation in structural engineering. Without recording any reasons, the opinion of the structural consultant appointed by the Petitioners has been ignored and perhaps TAC proceeded only on the basis of a report submitted by Municipal Engineers which was prepared only on the basis of visual inspection. Therefore, the entire decision making process of TAC is flawed. Hence, TAC needs to reconsider the present structural status of the building.

5. We must note here that no specific permission granted by the Respondent No.1 – Corporation is placed on record to show that tenants / occupants were permitted to carry out repairs to the building. The order dated 12th January, 2017 passed by the Deputy Chief Engineer (Building Proposal) City annexed to the Affidavit of the Respondent No.6 does not permit carrying out of

the repairs. It only refers to the supervision memo of an Architect and records that it may be accepted after recovering revalidation charges. It recommends that dangerous portion of the toilet block must be repaired immediately. However, there is nothing placed on record to show that the revalidation is of the earlier permission granted to carry out repairs.

6. However, we may add here that whether repairs were actually carried out or not and what is the extent of repairs carried out are the issues which cannot be finally resolved in writ jurisdiction under Article 226 of the Constitution of India.

7. Therefore, we pass the following order:-

(i) We hold that the report of TAC dated 29th March, 2016 (Exhibit 'F') to the Petition stands vitiated as the entire decision making process adopted by TAC was flawed;

(ii) We direct TAC to examine the structural status of the building in question afresh. It will be open for the TAC to appoint its own structural consultants for carrying out tests;

(iii) TAC shall endeavour to submit a fresh report within maximum period of two months from today;

(iv) After a fresh report is submitted, appropriate Municipal Officers will examine the same and will decide what action deserves to be taken on the basis of the said report. The order passed by the appropriate officer along with copies of the TAC report shall be furnished to the parties to the Petition as well as all tenants / occupants of the building;

(v) if an order of demolition is passed under Section 354 of the Mumbai Municipal Corporation Act, 1888, the same shall not be given effect for a period of three weeks from the date on which the order is served upon all the tenants / occupants of the building;

(vi) We make it clear that we have made no adjudication on the present structural status of the buildings and all the issues are left open to be decided by TAC and the appropriate officers of the Municipal Corporation;

(vii) Rule made partly absolute on the above terms.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)