

Sharayu Khot.

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

WRIT PETITION NO. 2316 OF 2015

Shri Neelkumar R. Gupta & Ors.

...Petitioners

Versus

**The Municipal Corporation of Greater
Mumbai & Ors.**

...Respondents

Mr. P.K. Dhakephalkar, Senior Counsel, and Mr. R.A. Thorat,
Senior Counsel, a/w Mr. P.B. Joshi, i/by Mr. Bhavin R. Bhatia,
for the Petitioners.

Ms. Pallavi Thakar, for the Respondent-BMC.

Ms. Hetal Vithlani, i/by Ms. Trishla Yelve, for the Respondents
No. 3 to 5.

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

DATE : 5 June 2018

ORDER :

1. The only substantive challenge in this Petition under

Article 226 of the Constitution of India is to the notices dated 2 June 2015 and 14 May 2015. Both the impugned notices purport to invoke the provisions of Section 354 of the Mumbai Municipal Corporation Act, 1888 on the ground that the subject building is in ruinous condition and is likely to fall. Both the impugned notices proceed on the footings that the building is required to be demolished.

2. Subsequently, the Mumbai Municipal Corporation referred the matter to Technical Advisory Committee (TAC) and on 29 March 2016, the TAC has submitted a report that the structure of the building was repairable. Thus, in the light of the said report dated 29 March 2016, now the Municipal Corporation cannot implement both the impugned notices issued in the year 2015.

3. We must also note here that Writ Petition No. 1966 of 2016 has been filed by the Respondent No. 3 in the present Petition wherein there is a challenge to the report of TAC

dated 29 March 2016. So long as the said report stands, impugned notices cannot be implemented. Therefore, it is not necessary to keep the Writ Petition pending. Hence, we pass the following order:-

- (i) In the light of the Report of the Technical Advisory Committee dated 29 March 2016, the Mumbai Municipal Corporation shall not implement the notices dated 2 June 2015 and 14 May 2015;
- (ii) We however, make it clear that we have made no adjudication on the merits of the Report dated 29 March 2016 which is the subject matter of challenge in the other Petition;
- (iii) We make it clear that so long as the Report dated 29 March 2016 holds the field, both the impugned notices cannot be implemented by the

Mumbai Municipal Corporation;

- (iv) In the event, the Report dated 29 March 2016 is set aside, the Municipal Corporation shall not implement the impugned notices without giving 15 days' advance notice in writing to the Petitioners. In such event, the Petitioners will be entitled to file a fresh Petition challenging the impugned notices;

- (v) The Writ Petition is accordingly, disposed of.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]