

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3119 OF 2015

Smt. Chambaben Raichand Gosrani & Ors.] Petitioners

Vs.

Municipal Corporation of Greater Mumbai]
& another.] Respondents

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Mr. Siddharth Sharma, for Petitioner.

Ms. Vandana Mahadik, for Respondent No.1-B.M.C.

Mr. Ruchit Thakar & Mr. Utsav Ghosh & Mr. Bhairavnath i/b
Rustamji & Ginwala, for Respondent No.2.

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CORAM : A.S. OKA AND

P.N. DESHMUKH, JJ.

DATE : 14TH FEBRUARY, 2018.

P.C.

Heard learned Counsel appearing for the first respondent and learned Counsel appearing for the second respondent. Learned Counsel appearing for the first respondent-Municipal Corporation states that Technical Advisory Committee [for short 'TAC'] has not submitted a report. In fact, in the Affidavit of Shri Sunil Bharambe, Designated Officer-IV to P/N Ward dated 24th August, 2017, it is stated that in view of the contradictory reports of the structural consultants, TAC will carry out required tests. Clause (i) of the said Affidavit also refers to the fact that the case is pending before TAC. Learned Counsel appearing for the first respondent states that TAC has not yet submitted the report.

2. The challenge in this Petition under Article 226 of the Constitution of India is to the notices dated 19th June, 2015 and 9th

July, 2015 which have been issued in purported exercise of powers under section 354 of Mumbai Municipal Corporation Act, 1888 (for short 'the said Act'). There is a notice dated 21st September, 2015 which is a consequential notice. By the notice dated 9th July, 2015, the first respondent informed the second respondent and the occupants that the building subject matter of this Petition is in dangerous and dilapidated condition and is required to be pulled down. By the consequential notice dated 21st September, 2015, the Municipal Corporation has directed that electricity and water supply to the building shall be cut off.

3. Admittedly, the matter is pending before TAC and therefore, unless TAC submits a report, notices issued under section 354 directing demolition of the building cannot be implemented. The law on this aspect has been laid down by this Court in the case of **The Municipal Corporation of Greater Mumbai Vs. State of Maharashtra and others.**¹

4. In terms of ad-interim order dated 29th September, 2015, the Petitioners had already furnished undertakings. In view of the fact that TAC is seized of the matter, the Petition need not be kept pending. The Petition is accordingly disposed of with the following directions:

- (i) We direct TAC to submit the report to the concerned Authority and/or Mumbai Municipal Corporation after complying with directions issued in the aforesaid decision in the case of **Mumbai Municipal Corporation Vs. State of Maharashtra and others** (supra). The report shall be submitted as expeditiously as possible

¹ 2014 SCC Online Bombay 666,

and in any event, within a period of two months from today;

- (ii) After the report is submitted, the concerned Authority of the Municipal Corporation will consider the report and decide whether the notices impugned in this Petition need to be implemented. In the light of the said report, appropriate decision shall be taken by the Municipal Corporation. The decision taken by the Municipal Corporation on the basis of the report submitted by the TAC shall be communicated to the petitioners and second respondent as well as other occupants, if any, of the subject building;
- (iii) Till the date of communication of decision taken by the Municipal Corporation to the Petitioners, ad-interim relief granted on 29th September, 2015 shall continue to operate. If the Municipal Corporation decides to carry out demolition on the basis of the impugned notices, ad-interim order shall continue to operate for three weeks from the date on which the the order of the Municipal Corporation is communicated to the petitioners. Till that date, undertakings given by the petitioners shall continue to remain in force;
- (iv) We are making it clear that we have not made an adjudication on present structural status of the subject building. All the issues are left open for the decision of the Municipal Corporation and TAC.
- (v) The Petition is disposed of on above terms.

[P.N. DESHMUKH, J.]

[A. S. OKA, J.]