

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER (ST) NO. 27686 OF 2019
WITH
INTERIM APPLICATION NO. 1 OF 2019**

Vimlaben Vishanji Thakkar & Ors. ...Appellants
vs.
Municipal Corporation of Greater Mumbai & Ors. ...Respondents

Mr.R.M. Haridas i/b. Neel Gala for Appellants.
Ms.Madhuri More for Respondent Nos.1 and 2.
Mr.Sanjay T. Manek for Respondent No.3.

CORAM : S.C. GUPTE, J.

DATE : 17 OCTOBER 2019

P.C. :

This appeal from order challenges an order passed by the City Civil Court, Greater Mumbai in a notice of motion.

2 After the matter is heard at some length, it is agreed between learned Counsel for private parties that the Technical Advisory Committee of Respondent No.1 herein-MCGM should consider the matter afresh and make a fresh report in accordance with law. This, the parties have agreed, purportedly on the basis that the record of the proceedings indicates that the structural reports of consultants, namely, Sardar Patel College of Engineering and V.J.T.I., respectively, appointed as consultants by the owner of the suit building Shreekrupa and MCGM, referred to structural assessment of Jalaram Estate at M.G. Road, Mulund (West), Mumbai and not Shreekrupa, R.H.B. Road, Mulund (West), Mumbai, which is the suit building.

3 Learned Counsel for the Respondent corporation is unable to throw any light on how these reports have been considered. She

only points out that the covering letter of V.J.T.I. submitting final report on structural audit indicates the name of the building as Shreekrupa. That is not an adequate explanation.

4 The impugned order of the City Civil Court dated 1 October 2019 is, accordingly, quashed and set aside. Notice of Motion No.636/2018 taken out by Respondent No.3 (original Defendant No.3) is disposed of, as not pressed, keeping all contentions of the parties open. Technical Advisory Committee of MCGM is directed to reconsider the matter of structural assessment of the building Shreekrupa afresh and in accordance with law. The committee shall consider whether the reports submitted by Sardar Patel College of Engineering on behalf of the Respondent and by V.J.T.I. on behalf of MCGM are in respect of suit building Shreekrupa at R.H.B. Road, Mulund (West), Mumbai. If it comes to the conclusion that the two reports referred to above are in respect of the suit building, namely, Shreekrupa at R.H.B. Road, Mulund (West), Mumbai, it may thereafter assess the structural condition of the suit building in the light of the rival reports. The parties, however, do not have to be heard afresh in that case. In case MCGM is of the view that the reports of Sardar Patel College of Engineering and V.J.T.I. are not in respect of the suit building, namely, Shreekrupa, but in respect of some other building, it may call for correct structural audit reports in proforma-B by Sardar Patel College of Engineering and V.J.T.I. in respect of the suit building, namely, Shreekrupa, and thereafter, the Technical Advisory Committee shall assess the structural condition of the suit building. In that case, however, the parties shall be heard afresh. All contentions of the parties on merits are kept open. Considering the fact that the matter pertains to the year 2014, the committee is requested to complete assessment of structural condition of the suit building expeditiously and preferably within six weeks from the date this order is uploaded.

Occupation, in the meantime, of the suit building Shreekrupa by tenants/occupants shall be at their own risk.

5 The appeal from order is disposed of.

6 In view of the disposal of the appeal from order, the interim application does not survive and is disposed of.

(S.C. GUPTE, J.)