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

**APPEAL FROM ORDER NO. 42 OF 2019
WITH
CIVIL APPLICATION NO. 53 OF 2019
IN
APPEAL FROM ORDER NO. 42 OF 2019**

Hanumant Rajaram Chavan & ors. ..Appellants

vs.

Municipal Corporation of Greater
Mumbai & ors. ..Respondents

....

Shri R.A. Thorat, Senior Advocate a/w. Yadunath Chaudhari &
Jaswanti Khatu I/b. Shri Omkar M. Kulkarni for appellants.

Mrs. Madhuri More for MCGM.

Shri N.N. Bhoir, Assistant Engineer-III (B & F), N Ward, present.

Shri H.R. Nalawade, Junior Engineer (B & F), N Ward, present.

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CORAM : M.S.KARNIK, J.

DATE : 1st AUGUST, 2019

P.C. :

Before the trial Court the appellants who are the original plaintiffs challenged the notice issued by the corporation under Section 354 of the Mumbai Municipal Corporation Act. This notice is based on the reports of the

Technical Advisory Committee ('TAC' for short) which are at pages 194 and 198. From the conclusions recorded, it is evident that the TAC has not inspected the premises in terms of the Division Bench decision of this Court in Writ Petition No. 191 of 2017 dated 7th August, 2018. The reports therefore will have to be set aside on this ground.

2. Learned counsel Mrs. More appears for the corporation states that now the TAC will proceed to inspect the condition of the building and submit a report in accordance with guidelines issued on 15/5/2018. One of the requirement is the TAC has to inspect the suit structure. The TAC reports dated 22/6/2017 at page 194 and dated 29/6/2017 at page 198 are therefore set aside.

3. The TAC to consider the issue in the meeting that will be held on 9th August, 2019. All contentions are kept open.

4. The TAC to proceed in terms of the guidelines.

5. Learned Senior Counsel Shri Thorat submits that an application has been made for carrying out the repairs on 23rd January 2015. The said application if it has been made, may be considered by the Corporation on its own merits.

6. In this view of the matter, the impugned order of the trial Court is set aside. The notice issued under Section 354 is set aside. It is open for the corporation to issue fresh notice in the event the TAC categorises the building as C-1.

7. Learned Senior Counsel for the appellants states that they will take appropriate steps to withdraw the suit. Learned Senior Counsel, on instructions of the appellants and as observed by the trial Court further states that the occupants are residing in the suit building on their own risk and they will not hold the corporation or any one responsible in the event of any mishap.

8. The Appeal is disposed of.

9. In view of the disposal of the Appeal, nothing survives for consideration in the Civil Application. The Civil Application is disposed of.

(M.S.KARNIK, J.)