

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

WRIT PETITION LODGING NO. 415 OF 2019

Mr. Mehool S. Kothari and Others

..Petitioners.

Versus

Municipal Corporation of Greater Mumbai & Others

..Respondents.

Mr. J. G. Damani, Advocate for the Petitioners.

Ms. K. H. Mastakar, Advocate for the Corporation.

Mr. R. M. Hardas, Advocate for the Respondent No.4.

Mr. Abbas Zaidy I/b. Zohair and Co., Advocates for the Respondent Nos.5 and 6.

Coram : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.

Date : **February 12, 2019.**

P. C. :

1. Heard the learned counsel for the respective parties.

The Petitioners by this petition are challenging the notices dated 29th August 2017 and 22nd January 2019 issued by the Respondent-Corporation in pursuance of fresh Technical Advisory Committee [for short "TAC"] report.

2. Earlier, notices under section 354 of The Mumbai Municipal Corporation Act, 1888 were issued by the Respondent-Corporation to the Petitioner-tenants as well as the owners of the said building on the ground that the said building in which they are residing is dilapidated. This notice was given on the basis of TAC Report dated 31st October 2017.

3. One Yogendra Bhat claiming to be the co-owner of the said building, challenged the said notice as well as TAC report by filing Writ Petition No. 20 of 2018. The main grievance of Yogesh Bhat in that petition was that no technical tests were conducted in accordance with the policy of Respondent-Corporation and the decision was taken in a meeting. The Court accepted this argument and disposed of that writ petition by order dated 5th January 2018. By its order, the Division Bench directed the TAC to submit a fresh report after following the directions contained in sub-clause (ii) of clause (d) of paragraph 9 of the decision of this Court in MCGM vs State of Maharashtra [2014 SCC Online Bombay 666]. It was observed that it would be open for the TAC to appoint expert / consultant for carrying out various tests. The TAC was directed to give report expeditiously and in any event within a period of eight weeks from the date of order. The Respondent-Corporation was thereafter directed to take appropriate action in accordance with the TAC report.

4. In pursuance of the above decision, the TAC appointed M/s. New Tech Consultants to inspect the building and to carry out tests. They submitted their structural audit report on 5th April 2018 thereby categorising the said building in category "C1". The TAC

thereafter examined the reports and came to the conclusion that the said building is deteriorated and dilapidated in condition which may endanger life and property of residents and therefore the structure needs to be vacated and demolished immediately. Accordingly, they categorised the building in "C1" category. This report is served on the Petitioner – tenants and thereafter the present petition is filed by the Petitioners.

5. The Petitioners are now disputing the TAC report. When we made query to the learned counsel for the Petitioner as to why they [Petitioners] did not approach the Respondent-Corporation with their structural audit report in terms of the policy, the learned counsel for the Petitioner submitted that the Petitioner-tenants were never issued notices under section 354 of the MMC Act. This statement of the learned counsel for the Petitioners, we find to be incorrect and the same is evident from Exhibit-H to the petition. This document is notice dated 3rd January 2018 issued by Petitioner Nos.5 and 6 to the Respondent-Corporation. This notice admits that Petitioner Nos.5 and 6 have received notice issued under section 354 of MMC Act, dated 29th August 2017.

6. Since the Petitioners have not availed the opportunity at the earlier time, under the policy of the Respondent-Corporation now

they cannot be allowed to dispute the TAC report. As stated above, the decision of the TAC is after following the said decision in *MCGM v/s. State of Maharashtra (supra)* as well as the policy of Respondent-Corporation. There is no ambiguity in the conclusions arrived at by the TAC. We, therefore, in exercise of our writ jurisdiction under Article 226 of the Constitution of India cannot interfere with the report of the expert technical body. The petition is devoid of any merit and the same is therefore **dismissed**.

7. At this stage, Mr.Damani, learned counsel for the Petitioners tenders in the Court letter dated 8th February 2019 addressed by the Petitioner to the designated officer, the Asst. Engineer (B/F), K/West Ward, MCGM along with structural audit report and submitted that the Petitioner-tenants have already submitted structural audit report however the same is not considered by the Respondent-Corporation. We have gone through the same. The structural audit report is dated 31st January 2019 and copy of the same is given to the Respondent-Corporation on 8th February 2019, which is much after service of the impugned TAC report dated 22nd January 2019. Obviously the same is belated and the same cannot be taken into consideration.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]