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(Corrected judgment in terms of order dated 16th April, 2019)

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

WRIT PETITION (Lodging) No. 625 of 2019

Suman Devidas Somani]
Adult, Indian Inhabitant,]
aged 80 years, Through:]
her Power of Attorney holder]
Mrs. Medha Rajendra Somani,]
residing at Room No.2, Plot No.247,]
Road No.15, Jawahar Nagar,]
Goregaon (West),]
Mumbai 400 104.] **..PETITIONER**

Versus

- 1) Municipal Corporation of Greater]
Mumbai, a Corporation constituted]
under the provisions of the]
Mumbai Municipal Corporation Act,]
1888 through the Municipal Commissioner,]
having his office at Mahapalika Bhavan,]
Mahapalika Marg, Fort,]
Mumbai 400 001.]
]
- 2) Assistant Engineer (Building &]
Factory), P/South Ward,]
having his office at Opposite City]
Centre Mall, S.V. Road, Goregaon]
(West), Mumbai 400 104.]
]
- 3) Mr Gordhanbhai K. Patel]
Adult, Indian Inhabitant, age not]
known, residing at Plot No.246,]
Road No. 15, Jawahar Nagar,]
Goregaon (West), Mumbai 100 104] **RESPONDENT**

ALONG WITH
WRIT PETITION (Lodging) No. 925 of 2019

Ambika Kutty]
Adult, Indian Inhabitant,]
Widow, aged 61 years,]
Residing at Room No.4]
Plot No.247, Road No.15,]
Jawahar Nagar,]
Goregaon (West)]
Mumbai -400 104.]**PETITIONER.**

Versus

- 1) Municipal Corporation of Greater]
Mumbai, a Corporation constituted]
under the provisions of the]
Mumbai Municipal Corporation Act,]
1888 through the Municipal Commissioner,]
having his office at Mahapalika Bhavan,]]
Mahapalika Marg, Fort,]
Mumbai -400 001.]
- 2) Assistant Engineer (Building &]
Factory), P/South Ward,]
having his office at opposite City]
Centre Mall, S.V. Road, Goregaon]
(West), Mumbai-400 104.]
- 3) Mr Gordhanbhai K. Patel]
Adult, Indian Inhabitant, age not]
known, residing at Plot No.246,]
Road No. 15, Jawahar Nagar,]
Goregaon (West), Mumbai 100 104.]**RESPONDENT**

Mr. Mayank Bagla a/with Ms. Deepali Bagla i/by
Alok Kumar Mohanlal Bagla for the Petitioners in
WP (L)/625/2019 and WP(L)/925/2019.

Ms. Sheetal Metkari for Respondent No.1 and 2 -
MCGM.

Mr. A.Y. Sakhare, Senior Counsel a/with Mr. Amogh
A. Singh, Mr. Bhavin R. Bhatia and Mr. Abhishek
Mishra for Respondent No.3.

**CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.**

RESERVED ON : 20th MARCH, 2019.

PRONOUNCED ON : 2nd APRIL, 2019.

JUDGMENT [PER: B. P. COLABAWALLA, J.]

1. Both these writ petitions have been filed challenging the Technical Advisory Committee (for short “**the TAC**”) report dated 22nd February, 2019 (**the impugned report**) and the notice issued pursuant thereto by respondent No.2 of the same date (**the impugned notice**) under Section 354 of the Mumbai Municipal Corporation Act, 1888 (for short “**the MMC Act**”). The short ground of challenge is that the impugned notice as well as the impugned report have the effect of depriving the petitioners of their occupation, livelihood and valuable immovable property and have

been passed without any application of mind and is a colourable exercise of power. It is in these circumstances that the petitioners have invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, seeking a declaration that the impugned report and the impugned notice are illegal, null and void and for quashing and/or setting aside the same.

2. The petitioner in W.P.(Lodging) No. 625 of 2019 is an 80 years old lady and claims to be in use, occupation and possession of a residential premises being Room No.2, Plot No. 247, Road No.15, Jawahar Nagar, Goregaon (West), Mumbai-400 104. She claims to be in possession of this property as a tenant of respondent No.3. According to the petitioner, the said property admeasures approximately 315.17 square feet carpet area. As far as the petitioner in W.P. (Lodging) No.925 of 2019 is concerned, she is a widow, aged 61 years. She claims that she is in use, occupation and possession of her residential premises being Room No.4, Plot No. 247, Road No.15, Jawahar Nagar, Goregaon (West), Mumbai-400 104. She too claims to be a tenant of respondent No.3. Considering that the facts and the question of law are identical in both the petitions and the same impugned report and the impugned notice are challenged therein, both the writ petitions are being disposed of

by this common order and judgment.

3. For the sake of convenience, we shall refer to the facts as set out in W.P. (L) No. 625/2019. The building (on plot No.247) in which the room occupied by the petitioner is situated was constructed in or around 1960. This building is almost 60 years old and occupied by the tenants. According to the petitioner, over a period of last five to ten years, respondent No.3 started to take possession of various premises in the said building from its tenants/lessees, on one pretext or the other, by making appropriate payment to them. According to the petitioner, respondent No.3 had indicated that it was his intention to enter into a development agreement with a reputed developer to develop the piece of land on which the said building was situated and to make profits therefrom.

4. Be that as it may, since the building was quite old, the Assistant Commissioner (P/South ward) of respondent No.1 issued a notice dated 10th January, 2014 under Section 353-B of the MMC Act, calling upon respondent No.3 (the landlord) to submit a Structural Stability Report to the effect that the building is in a sound condition. There were two further notices served on the landlord under the aforesaid provision on 12th June, 2015 and 19th

September, 2017 respectively.

5. According to the petitioner, without taking any action against the landlord (respondent No.3) for not complying with the requisitions set out in the Section 353-B notices, suddenly on 1st September, 2018 respondent No.1 served a letter upon the tenants of the building informing them that the building was in a dilapidated and dangerous condition and therefore needed to be vacated so that the same could be pulled down. This letter (dated 1st September, 2018) also refers to a report submitted by the Structural Consultants of respondent No.3 namely, M/s Kummy Engineering, dated 13th August, 2017. The petitioner was also called upon to lodge their objections to the report by the said Structural Consultants.

6. Thereafter, on 11th December, 2018 respondent No.1 issued a notice under Section 354 of the MMC Act, calling upon the tenants, including the petitioner, to vacate the entire building for the purposes of demolishing the same. This notice was replied to by the petitioner submitting that the building was in a repairable condition and was not required to be pulled down and it was the duty of respondent No.3 to get the building surveyed and maintained periodically. It was stated that respondent No.3 had failed and neglected to keep the said building in a habitable condition and

carry out the necessary repairs.

7. In these circumstances, the petitioner, at her own cost, appointed a reputed and competent structural engineer to examine the said building. The structural engineer appointed by the petitioner was M/s TEC Re-build Civil Engineers. This structural engineer submitted his report dated 2nd January, 2019, and according to the petitioner, it was stated therein that only the external structure like chajjas were required be demolished and otherwise the entire building was in a repairable condition. This report was served by the petitioner on respondent No.1 vide their covering letter dated 6th January, 2019.

8. According to the petitioner, to their shock and surprise, respondent No.2, by his letter dated 22nd February, 2019 addressed to the petitioner and respondent No.3, informed that the TAC meeting was held on 12th February, 2019 wherein it was held that the structural audit report of KG Shah of M/s Paras Consultants and Shri U.Y. Chaugule of M/s Kummy Engineering (both engineers appointed by respondent No.3) were acceptable. In these circumstances, the TAC opined that the building falls in C-1 category. It is to challenge this TAC report (impugned report) as well as the impugned notice issued pursuant thereto, both dated 22nd February,

2019, that the present petition has been filed.

9. In this factual backdrop, the learned Advocate appearing on behalf of the petitioners submitted that considering the structural report of Shri Santosh Shinde of M/s TEC Re-build Civil Engineers, dated 2nd January, 2019 which categorically stated that the building is in a repairable state and could be categorized as falling in category C-2A, there was no requirement or urgent need to pull down and demolish the said building. He submitted that looking at the conduct of the respondents, it was clear that respondent No.1 had failed and neglected to discharge its duties and that all of them were acting in collusion with each other. He submitted that in fact, at one stage, respondent No.3 had offered to provide permanent alternate accommodation to the petitioner in the newly constructed building having a carpet area of 200 square feet and when this proposal was not accepted by the petitioner, respondent No.3 had prevailed upon respondent No.1 to initiate the aforesaid proceedings for demolition of the said building. He submitted that the entire action smacks mala fides and ought to be set aside.

10. It was then submitted that there has been a breach of principles of natural justice considering that the TAC did not give

any notice of hearing to the petitioner. He submitted that the petitioner ought to have been heard by the TAC before making any report. Even otherwise, the TAC has not conducted any independent tests to verify the results and reports submitted by the structural engineers of respondent No.3 as well as the petitioner and therefore, was in violation and breach of the order dated 23rd June, 2014 passed in Writ Petition No.1080/2015, was the submission. He therefore submitted that this report is wholly unreliable. To put it in a nut-shell, it was submitted that the TAC had not applied its own mind but had only interpreted and relied upon the reports of the structural engineers. This was also clear from the fact that no officer and/or engineer of respondent No.1 even visited the building, much less conducted any tests to independently assess the structural stability of the building. For all the aforesaid reasons, the learned Advocate submitted that the impugned report as well as the impugned notice (both dated 22nd February, 2019) are illegal, null and void, *non est* and ought to be set aside.

11. On the other hand, the learned Advocates appearing for the respective respondents submitted that there was no merit in this writ petition. It was brought to our notice that apart from the

petitioners in these two writ petitions, all the other tenants of the building have vacated the said building to enable it to be demolished. It was submitted that the building is in a dilapidated and dangerous condition and is not only hazardous to the life and liberty of the petitioners but also to passers by. The decision to demolish the said building was taken by the authorities after considering all the structural reports submitted by three different structural engineers and there was nothing wrong when the TAC categorized the said building as C-1 category. It was submitted that the tenants like the petitioners cannot determine whether the building is safe or otherwise and it is for the appropriate authorities to come to that conclusion. Since the TAC appointed under the aegis of respondent No.1 had, in its expert opinion, come to the conclusion that the building was in a dilapidated and dangerous condition, the impugned notice under Section 354 was issued to the tenants of the said building. In these circumstances, it was submitted that there was no merit in these writ petitions and they ought to be dismissed.

12. We have heard the learned Counsel for the parties at length and have perused the papers and proceedings in the writ petitions including the report submitted by the TAC dated 22nd

February, 2019 (impugned report). At the outset, we may mention that it is not in dispute that the petitioners in both the petitions are the only tenants who are refusing to vacate the said building and are insisting that it is in a repairable condition. We fail to see how a tenant and who in this case, admittedly, is not an expert for determining whether a building is in a dilapidated condition or otherwise, can contend that the building is safe and habitable. As mentioned earlier, all the other tenants have vacated the said building. It is only the petitioners herein who have refused to vacate their respective premises.

13. Be that as it may, we have gone through the report of the TAC in some detail. The TAC has noted all the three reports that were brought before it. Not only did it examine the reports, but even the engineers who prepared the said reports, were before the Committee. There were questions put by the Committee (TAC) to the engineers on the reports submitted by each of them. It was after carrying out this entire exercise that the impugned report was prepared. All this is quite clear from reading the said report which can be found at Exhibit "O" to the petition (pg 140 to 145 of the paper-book).

14. On going through this report, we find that the TAC has correctly applied its mind and has not violated the principles of natural justice as is sought to be contended by the petitioners. There is no requirement in law and nothing has been brought to our notice that the tenants of the building have to be given notice before such a report is prepared. In the facts of the present case, the Structural Engineer's report submitted by the petitioners was before the TAC and the said Structural Engineer was also present (Shri. Santosh Shinde). After considering all the three structural reports that were before the Committee, it came to the conclusion that the structural audit reports of Shri K.J. Shah of M/s Paras Consultants and Shri U.Y. Chaugule of M/s Kummy Engineering were acceptable. What is important to note is that even the structural audit report submitted by Shri Santosh Shinde (appointed by the petitioners) contemplated partial demolition and major structural repairs. In fact, the Conclusions and Recommendations given in the structural audit report submitted on behalf of the petitioners read as under:

“CONCLUSIONS & RECOMMENDATIONS:

- 1) The structural condition of the building based on visual inspection/NDT of beams/ columns/ slabs/ chajjas/ external wall plaster etc. is categorized from **“Critical” to “Fair”**.

- 2) The non-destructive test results conducted on the building are consistently giving an indication that the concrete is in **Doubtful** condition.
- 3) The building is in a repairable condition with partial demolition and major structural repairs required.**
- 4) The validity of the audit report is for Six months from the date of submission i.e. up to 2/7/2019.
- 5) We disclaim any responsibility of the finding if the client chooses not to follow our recommendations. We are also not responsible for any mishap or failure if they are to occur beyond the validity period of this report.”

15. Looking to the totality of the facts of the case, we do not think that there has been any violation of the petitioners' legal rights that require our interference under Article 226 of the Constitution of India. This is more so, when we note that the rights of the petitioners in the premises that they were occupying is adequately protected under the provisions of the MMC Act and more particularly Section 354 thereof. In fact, Section 354(5) clearly stipulates that action taken under this Section shall not affect the inter-se rights of the owners or tenants or occupiers, including the right of re-occupation in any manner. This being the case, we fail to see the opposition of the petitioners to the demolition of the building and which is proposed to be done pursuant to the opinion of experts.

The opinion of experts with regard to the condition of the building is a subjective opinion. This subjective opinion/views, even if in our opinion, suffers from some error about the condition of the building, cannot be substituted by the court, unless the same is perverse or smacks of malafides. In the field of expertise, it is best left to the experts in that field to decide what course of action has to be taken. As long as the opinion of the experts is not tainted with *mala fides* or perversity, this Court would loathe to interfere with such expert opinions.

16. In the facts of the present case, apart from making wild and baseless allegations of collusion between the respondents, nothing has been brought to our notice to even remotely substantiate these allegations. In fact, on going through the papers and proceedings, we find that these allegations are completely baseless and are made only to some how make out a case to challenge the impugned report and the impugned notice. We therefore have no hesitation in rejecting such wild and reckless allegations, and that too against a public authority performing its duties under the Statute, namely, the MMC Act.

17. In view of the aforesaid discussion, we find no merit in these writ petitions. They are accordingly dismissed.

18. In view of the findings given by us, we would be fully justified in awarding heavy costs against the petitioners for bringing such frivolous writ petitions before this Court. It is only considering the age of the petitioners that we refrain from doing so. In these circumstances, there shall be no order as to costs.

(B. P. COLABAWALLA, J)

(S. C. DHARMADHIKARI, J)

19. After this judgment was pronounced, a request is made to continue the ad-interim order for a period of two months to enable the petitioner to consider his position, including challenging this order in a higher Court. This request is opposed by pointing out that the building has already been demolished and that the challenge to notice does not survive.

20. Having heard both sides on this limited point and in the light of our findings, we do not think that we should continue the ad-interim order any further. The request is accordingly refused.

(B. P. COLABAWALLA, J)

(S. C. DHARMADHIKARI, J)