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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 2841 OF 2018**

Ramesh R Desai & Ors ...Petitioners
Versus
Municipal Corporation of Greater Bombay & Ors ...Respondents

Mr Karl Shroff, *with Mr YK Singh, i/b M/s Desai & Diwanji, for the
Petitioners.*

Ms Vandana Mahadik, *for MCGM.*

Mr SA Sawant, *with Mr HS Kadam, i/b AP Deshmukh, for
Respondent No.4.*

Mr Vijaykumar R Patil, *Junior Engineer, H/East Ward, present.*

**CORAM: S. C. DHARMADHIKARI &
G.S. PATEL, JJ**

DATED: 16th August 2019

PC:-

1. The petitioners have instructed Mr Shroff appearing on their behalf to seek leave to withdraw this writ petition.
2. Accepting that request, we allow this writ petition to be withdrawn and dispose it of as such.
3. The request of Mr Shroff is that on 24th August 2018 this Court has protected the petitioners occupation of this premises by passing the following order:

“The learned Counsel appearing for the petitioners submits that within two weeks structural engineer report will be submitted to the Corporation.

2. The learned Counsel appearing for the Corporation submits that since last 5 years inspite of issuing notices, the petitioners failed to submit structural engineer’s report.

3. In case the petitioners submit the structural engineer report within two weeks, the Corporation should refer the same to the Technical Advisory committee.

4. The Technical Advisory Committee shall thereafter complete its further survey assessment within four weeks and submit its report to the Corporation.

5. For a period of six weeks, a status-quo as of today shall be maintained on petitioners giving undertaking as under:-

a. The petitioners shall not create any third party interest in the property;

b. They would occupy the premises at their own risk and shall not claim any equity in case of building is demolished.

c. They shall also not hold the Corporation including respondent No.4 responsible for the same.

6. The undertaking shall be filed by Monday i.e. 27th August 2018.

7. The petitioners shall co-operate for allowing the experts of T.A.C. for entering the premises for conducting survey. The petitioners shall also give advance intimation to respondent No.4.

8. Stand over for eight weeks under caption “Fresh Admission”.

4. He would submit that this order may be continued for a period of four weeks just to enable the petitioners to vacate the premises.

5. We are unable to accede to his request for more than one reason. The notice under challenge is of 16th August 2018. This Court passed an order recording that no structural engineer was consulted nor was his report submitted to the Municipal Corporation until this Court heard the petitioners’ Advocate on the point of interim/ad-interim reliefs. This Court noted the objection of the Municipal Corporation that for five years the Municipal Corporation has been calling upon the petitioners to submit such a report so that it could examine the correctness of the petitioners’ assertion that the structure is sound and stable. The structural report after the structural audit is required in terms of the statute itself. The petitioners stated before this Court that within two weeks the report would be submitted. Thereafter, the matter should be referred to the Technical Advisory Committee.

6. Now this entire exercise is over. The condition of the building is precarious. We do not think that after the findings of the Technical Advisory Committee recorded on 12th March 2019, the request of Mr Shroff can be granted. The conclusions in this report, on a comparative analysis of the structural auditor’s report placed on record, reveal that the building is indeed dangerous and unsafe for human occupation. It is likely to fall thereby endangering those

residing in its neighbourhood as also passing by the same. In these circumstances, the request of Mr Shroff is refused.

7. Needless to clarify that the private grievances as between the petitioner and respondent No. 4 are not affected by this order.

8. A copy of Technical Advisory Committee's report is taken on record and marked "X" for identification.

(S. C. DHARMADHIKARI, J)

(G. S. PATEL, J)