

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 7913 OF 2022****Janardan Ramkrishna Dixit Hardikar****..... Petitioner****VERSUS****Kalyan Dombivli Municipal Corporation
& Ors.****..... Respondents**

Mr.Bhavesh Parmar, a/w. Ms.Reshma Nair, i/b. Mr.Devmani Shukla for the Petitioner.

Mr.Sandeep Shinde for the Respondent nos. 1 and 2.

Ms.Purvi Doctor, i/b. Elixir Legal Services for the Respondent no.3.

**CORAM: R. D. DHANUKA AND
KAMAL KHATA, JJ.**

DATE : 4TH AUGUST, 2022

P.C:-

This matter was on board on 15th July, 2022 when learned counsel for the petitioner and respondent no.3 gave their no objection for appointment of the auditor from the Panel of the respondent no.1 as structural auditor to visit the writ structure and to submit the structural audit report showing the status of the building. Both the parties also agreed that they would abide by the report that would be submitted by the structural auditor.

2. In pursuance of the said order, P.V.Kulkarni & Associates have submitted a structural audit report. A copy of the said report has been furnished to both the parties.

3. The said report indicates that the deterioration due to weathering and corrosion distresses and the results of NDTs renders the structure incapable to withstand the design loads acting on it as per the provisions and requirements of I.S. codes which makes the said building fall under category C1 to be evacuated/demolition and is unsafe for habitation. The structural auditor has opined that the structure is of 70 and 50 years old building is in dilapidated condition and falls under C1 category.

4. In view of the statement made by the learned counsel for the parties that they would abide the report that would be submitted by the structural auditor and in view of the fact that the structural auditor opined that the building is in dilapidated condition and falls in C1 category, we direct the petitioner to vacate the tenement in his occupation alongwith all the occupants staying with him within one week from today and shall handover vacant possession to the respondent nos. 1 and 2 without fail. If the petitioner does not handover the possession to the Municipal Corporation, the Corporation will be at liberty to take forcible possession and if necessary with the assistance of police after expiry of one week from today.

5. Mr.Parmar, learned counsel for the petitioner invited our attention to the remark on the report submitted by the structural auditor and would submit that the respondent no.3 landlord has removed the roof of the premises occupied by his client which resulted in further damage to the structure. The petitioner seeks to pursue other prayers in the petition.

6. Whether the respondent no.3 has illegally removed the roof of the structure of the petitioner or not, the same cannot be decided by this Court in this petition. The petitioner has already agreed to vacate the premises in his possession. In our view, nothing survives in this writ petition.

7. Writ petition is accordingly dismissed. There shall be no order as to costs.

8. The parties to act on the authenticated copy of this order.

[KAMAL KHATA, J.]

[R. D. DHANUKA, J.]