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

**APPEAL FROM ORDER NO.193 OF 2021
WITH
INTERIM APPLICATION NO.1884 OF 2021**

Shantilal Mehta (since deceased)
through L.Rs. Nitin Navinchandra Mehta
and ors. ..Appellants

vs.

The Municipal Commissioner,
Municipal Corporation of Greater
Mumbai and ors. ..Respondents

Mr. Samir Sarambalkar for appellants.
Mr. Dharmesh Vyas a/w Mr. Om Suryavanshi for
respondent-MCGM.
Mr. Kalpesh Joshi a/w Smt. Nisha Shah and Mr. Darshit
Rupada i/b. Kalpesh Joshi Associates for respondent no.5.
Mr. Pravin Madhukar Muluk, Assistant Engineer (B & F)
Department, P/North Ward is present.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 7, 2022.

P.C. :

1. Heard learned counsel for the parties.
2. The challenge in this Appeal is to an order dated 22.07.2021 passed by the trial Court dismissing the notice of motion filed by the Appellants-plaintiffs to restrain the defendants-MCGM from executing the impugned notice issued under Section 354 of the Mumbai Municipal

Corporation Act, 1888 (hereafter "the said Act", for short) dated 10.07.2014 and 23.12.2015 and the impugned orders dated 15.09.2015 and 19.09.2015. During the pendency of the suit, further notice came to be issued.

3. Suffice it to observe that the appellants are tenants in respect of Ground + 2 storied structure which is almost 80 years old. According to the appellants, the structure is in a habitable condition and only needs repairs. The photographs have been produced by the learned counsel for the appellants to demonstrate that the structure is in a good condition. Learned counsel for the appellants submits that after the Section 354 notice was issued, the tenants have submitted a report of the IDDC Engineers Private Limited, which records that based on the audit, the structure cannot be said to be dilapidated enough for it to be demolished and the same can be repaired as recommended. The structural consultant classified the building in C-3 category.

4. The MCGM on the other hand had before it the report submitted by M/s. Mahimtura Consultants Private Limited submitted by the owners of the building. However, as M/s.

Mahimtura Consultants Private Limited are not on the panel of the MCGM, learned counsel for the MCGM submitted that the report was not taken into consideration. Thereupon, the report from the Veer Jijabai Technological Institute (hereafter "VJTI", for short) was obtained which recommended that to repair the building, the slab has to be reconstructed, that is, the upper floors will have to be dismantled upto the foundation level and the building must be brought down to carry out the repairs.

5. As there were two contrary reports, the matter was referred to the Technical Advisory Committee (hereafter "TAC", for short). The TAC vide its report dated 14.07.2015 opined that the structure in question shall have to be evacuated and demolished immediately under the supervision of the Structural Engineer. The trial Court relying upon the order of the TAC and other materials on record did not find favour with the appellants notice of motion. The notice of motion was rejected for the reasons mentioned in the impugned order.

6. Learned counsel for the appellants, assailing the order

of the trial Court, submitted that the Section 354 notice itself is defective as it was issued in respect of Ground + 3 storied structure which was adjoining the present suit premises and on this ground itself further steps taken cannot be said to be legal. It is submitted that even the report of the VJTI does not state that the structure needs to be demolished but mentions that the repairs can be carried out to the building as the foundation level of the building is in a proper condition. Learned counsel submitted that as there are two reports on record, one in favour of the owner and the other in favour of the tenants, there has to be a third report from an impartial agency. Learned counsel urged that the building is in a repairable condition. Relying on the decision of this Court in **Municipal Corporation of Greater Mumbai vs. State of Maharashtra and others**¹, learned counsel submitted that the report of the TAC is defective as it has not complied with clause 9(d) of this Court's order. The TAC has not carried out a visual inspection or carried out the test by itself which renders the report of TAC defective.

1 Writ Petition (L) No.1135 of 2014

7. Learned counsel for the Corporation and the owners on the other hand supported the impugned order.

8. I have gone through the impugned order. The contention that Section 354 notice was issued for Ground + 3 storied structure and not the present structure which is Ground + 2 storied is without any substance. The appellants have properly understood the notice was in respect of the subject structure, as the owners have submitted the report of VJTI in respect of the suit structure. Further, the appellants have also submitted the report submitted by their structural engineers. The contention is therefore without any merit.

9. Before the TAC were two reports, one of the owner and the other of the tenants. Initially, the owner had submitted the report of M/s. Mahimtura Consultants Private Limited. M/s. Mahimtura Consultants Private Limited report was not relied upon by the Corporation. The VJTI's report recommended that to repair the building, the slab has to be reconstructed, that is, the upper floors will have to be dismantled upto the foundation level and the building must

be brought down to carry out the repairs.

10. It is the submission of learned counsel for the MCGM that the word repairs mentioned in VJTI's reports is misconstrued by the appellants to mean the building is repairable. In my opinion, it is not possible to accept the submission of learned counsel for the appellants. The report of the VJTI indicates that upto the foundation level the upper floors have to be dismantled meaning thereby the entire building has to be brought down. The report of the tenants no doubt recommends that the building can be repaired. The report of tenants was considered by TAC. The TAC is an expert body. The TAC has considered both the reports. After considering the reports, it has observed that the results of Ultra Sonic Pulse Velocity are in the range of 1.15 km/sec to 2.42 km/sec as per Rebound Hammer test, the strength of slabs is below 9 M.P. which are very poor. It is further observed that the structural steel members have lost the thickness from 12.1 to 35%. No doubt, there is comparison of N.D. Test result made between M/s. Mahimtura Consultants Private Limited and IDDC Engineers

Private Limited and there is a reference to the same in the TAC's report. The TAC, nonetheless, upon considering all reports concluded as under :-

"The structural Audit reports of all the Consultants are taken on record. The TAC noticed that both the structures are load bearing structures and the results of N.D. tests carried on RCC slab and I-sections are poor and below par. As the site was inspected by concerned Ward staff along with Building Proposal staff and Consultants have already carried out the N.D. tests, TAC has neither felt necessity to inspect the site nor necessity to conduct the further N.D. tests. Hence, TAC opined that the structure under reference (Hyper Value Market Building and Banarasi Chawl) shall be evacuated and demolished immediately under supervision of Structural Engineer."

11. It is material to note that the TAC has not itself visited the structure but the concerned officers/structural consultants did visit the structure and there are reports on record indicating the condition of the building. In such circumstances, it cannot be said that there is any breach of the order passed by this Court. Learned counsel for the MCGM relied upon the decision of this Court in **Vivek Shantaram Kokate and others vs. The Municipal Corporation of Greater Mumbai and others**² which

² 2020 (1) All MR 656

supports the stand of MCGM. Having considered all these materials, the trial Court refused to grant any relief to the appellants in the notice of motion.

12. Further, I am informed that out of 45 tenants, 24 tenants have already vacated.

13. Earlier it was submitted by learned counsel for the appellants that since 2014 when the notice was issued under Section 354 of the said Act, the building still stands and it only need repairs. After I expressed my view, it is submitted on instructions that some time may be granted to the appellants to vacate the suit premises. In case the appellants to file an undertaking within two weeks from today that within three months from today they will vacate the premises, no further action pursuant to Section 354 notice be taken for a period of three months from today. It is made clear that the appellants will reside in the structure at their own risk as to the consequences in the event any mishap happens. In the meantime, the Corporation and the owner to ensure that there are proppings in place to protect the structure.

14. Having regard to the well considered order passed by the trial Court, I find no reason to interfere with the order passed by the trial Court.

15. Appeal From Order is dismissed. No cost.

16. In view of the dismissal of the Appeal From Order, nothing survives for consideration in the interim application and the same stands disposed of accordingly.

(M. S. KARNIK, J.)