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appellants-plaintiffs pursuant to the decision taken by the Technical Advisory Committee (hereafter "TAC", for short) dated 10.12.2019. The structure in question, 'A' wing, is a ground + 2 storied one. So far as the second floor is concerned, it is informed that the same stands completely vacated. Around 7 to 8 tenants are still residing in the 'A' wing. There are three shops on the ground floor which are in occupation of the tenants.

2. A notice under Section 354 of the Mumbai Municipal Corporation Act, 1888 (hereafter "the MMC Act", for short) was initially issued on 12.05.2012. The eviction notice was issued by the MCGM on 20.04.2019. The landlord submitted a report of the Veermata Jijabai Technological Institute (hereafter "VJIT", for short) that the building is in a dilapidated condition and hence requires to be demolished as the same is categorized as C-1 in the report. The tenants, in turn, submitted a report of their own structural engineer dated 30.07.2019 which categorized the building as C-2A meaning thereby that the building has to be evacuated or partially demolished requiring major structural

repairs and the repairs should have to be carried out within two months. When the building is categorized as C-1, the same needs to be vacated and demolished immediately.

3. As the report of the VJIT was incomplete in some respects, a second report was submitted by the landlord of the structural engineers-M/s. P. V. Kulkarni & Associates dated 28.08.2019. This report categorized the building as C-1. The TAC categorized the building as C-2A. The appellants-plaintiffs filed a suit before the trial court. The trial Court refused to grant the temporary injunction in favour of the appellants by the impugned order dated 11.10.2021.

4. Assailing the order of the trial Court, Mr. Hardas submitted that the TAC has not followed the guidelines issued by the MCGM for declaring private and municipal buildings as C-1 category. The guidelines dated 25.05.2018 are issued under Section 353(B) and Section 354 of the MMC Act. It is submitted by Mr. Hardas that the TAC simply relied upon the report submitted by the tenants and the landlord and proceeded to categorize the building as C-1.

According to Mr. Hardas, the TAC should have independently carried out its own tests. In support of his submission, Mr. Hardas relied upon the observations of the Division Bench of this Court in the orders dated 27.07.2015 and 20.01.2016 in the case of **Union of India and another vs. Municipal Corporation of Greater Mumbai and others**¹. Mr. Hardas also relied on the decision of this Court dated 10.08.2018 in the case of **M/s. Green Twig Estate Management Pvt. Ltd. and others vs. Municipal Corporation of Greater Mumbai and others**². Mr. Hardas submitted that when there are two contradictory reports, in such a case, the TAC itself should have carried out the tests, which it has failed to. He further submitted that so far adjoining building i.e. 'B' wing is concerned, the very same TAC categorized the building as C-2A and since then the building has been repaired. Considering that the condition of the 'B' wing is same as 'A' wing, learned counsel submitted that even in respect of 'A' wing, the TAC should have accepted the tenants' report and categorized the

1 Writ Petition No.435 of 2015

2 Writ Petition No.1966 of 2016

building as C-2A.

5. Learned counsel for the MCGM on the other hand relied on the guidelines dated 25.05.2018 of the MCGM. My attention is invited to the findings of the TAC. Learned counsel submitted that after following the guidelines, the TAC has categorized the building as C-1.

6. Heard learned counsel for the parties.

7. I have gone through the report of the TAC. In the report of the TAC, it is observed that the TAC visited 'Rama Bhuvan' A-wing building on 22.11.2019 and on a visual inspection noted that there were major cracks due to corrosion. It is further observed that the slabs of two rooms on the third floor had collapsed. It then took into consideration the reports of the structural engineers submitted by the tenants as well as the landlord. The structural engineers were duly heard. In the report, it is observed that the concrete had badly deteriorated, hence undertaking core test was not possible. It was further observed that it was not possible to extract concrete sample, since concrete has badly deteriorated. According to

the TAC, the building was required to be vacated and demolished as the same was in dilapidated condition.

8. Thus, the TAC considered the report of the structural engineers and also carried out a visual inspection. The structural engineers were duly heard. It would be profitable to refer to the relevant portion of the TAC which sets out its observations and the conclusion :-

"Proceeding

At the outset Chairman explained in nutshell the importance and purpose of TAC formed with respect to orders of Hon. High Court in W.P. 1135 of 2014 and 1080 of 2015.

The site under reference of above referred 'Rama Bhuvan' A-wing Building is visited by TAC committee on dtd. 22/11/2019 under the chairmanship of Dy. ChE. (BP) E.S. and observations as below:-
1) Dampness in walls of rooms at Ground Floor are observed, And for staircase and common passages i) Due to spalling of concrete major reinforcement was exposed & corroded and dampness was observed in slab. ii) Due to spalling of concrete major reinforcement was exposed & corroded in beams. iii) Major crack due to corrosion-in reinforcement main bar was observed in columns. iv) Major crack due to corrosion-in reinforcement main bar was observed in columns. Also the slabs of two numbers of rooms at third floor found collapsed.

The details of the reports are submitted by three the Structural Auditors.

The chairman asked representative of Nayan Dholakia Structural Engineer (Chartered Engineer) (For Tenants) to justify their statement that structural

repairs on urgent basis with eviction, structural repairs under C-2A category. Discussion regarding observations consultants states that a) Doors & windows don't close-Nil. b) Column and steel exposed – The staircase columns has vertical cracks seen, slab has part concrete come off and has to be repaired and restored. Cracks seen in the beam and slab. c) Settlement uneven flooring gaps between & Skirting & floor-Nil. d) Foundation settlement-Nil. e) Deflection/sagging-Nil. f) Major cracks in columns/beams- g) Seepage/leakages- Toilet block, all the floors has leakages seen. h) Staircase area/Column Condition-Part concrete of the waist slab has come off. i) Lift walls – NA. j) U.G. Tanks-Leakages seen in the walls. k) OHT/Column conditions-Ok. l) Parapet at terrace-Ok. m) Chajjas-Cracks are seen in many chajjas. n) Common areas- o) Toilet blocks-Heavy leakages are seen at all the floors. p) Terrace/water proofing-Done. After discussion the Chairman asked the consultant to elaborate regarding method and cost of repairing the structure, the consultant said that the nature & methodology of repairs is by epoxy modified mortar, polymer modified mortar, micro concreting and projected repair cost is about 1700/- per sq.ft. (approx).

TAC Chairman asked Shri R. C. Tipnis of M/s. P. V. Kulkarni & Associates representative from Owner of building Rama Bhuvan A-wing state that going through observations a) Doors & windows don't close-No. b) Column and steel exposed – Yes. c) Settlement uneven flooring gaps between & Skirting & floor-To some extent. d) Foundation settlement-No. e) Deflection/sagging-Yes. f) Major cracks in columns/beams-Yes. g) Seepage/leakages-Yes. h) Staircase area/Column Condition-Concrete deteriorated. i) Lift walls-NA. j) U.G. Tanks-Concrete deteriorated. k)OHT/Column conditions-Concrete badly deteriorated, leakages through tanks supporting columns cracked. l) Parapet at terrace-Cracks in parapet walls. m) Chajjas-Concrete deteriorated, chajjas deflected.

n) Common areas-Concrete deteriorated, chajjas deflected. o) Toilet blocks-Leakages through slab and pipe joints. p) Terrace/water proofing-Leakages.

And observations test carried out Ultrasonic Pulse Velocity Test-2.28km/sec Rebound Hammer test 13.17 N/mm² (Medium Category) Half cell Potential test-391.45 mV (Probability of corrosion 90%) Carbonation depth test-upto reinforcement on an average. Core test-Concrete badly deteriorated, hence taking core is not possible. Chemical Analysis – It was not possible to extract concrete sample, since concrete is badly deteriorated. And it is required to vacated and demolished above referred building, as the building is dilapidated condition.

TAC Conclusion:-

On basis of the reports submitted by the Structural Auditors, the results of the Non-destructive testing & design analysis of the structure for the present condition, visual inspection carried out by the members of the TAC & proceedings of this meeting, of building Rama Bhuvan A-wing for which structural audit have been done. And it is unanimously decided by the T.A.C. that the structure known as 'Rama Bhuvan' A-wing situated at N. S. Road, Mulund (W), Mumbai-80 in T Ward is structurally deteriorated and is in dilapidated condition.

In view of above, it is unanimously declared that the above cited structure falls under C-1 Category. Under the circumstances the structure under reference needs to be vacated and demolished immediately.

Designated Officer, 'T' ward shall therefore take necessary action as per the policy guidelines issued in this regards."

9. The Trial Court upon perusing the structural audit reports submitted by the appellants-plaintiffs as well that of

the landlord observed as follows :-

"12. I have perused the structural audit report submitted by the plaintiff. The structural auditor on perusal of the said report. The said auditor come to the conclusion that the suit building falls under C2-A category. The term C2-A means to be evacuated or partially demolish requiring the major structural repair and the repairs should be carried out within two months. So the auditor also suggest for partial and evacuation from the suit property. On the other hand structural auditor of the landlord stated in his report that the building falls under C-1 category. The structural auditor in his report had stated that concrete badly deteriorated hence taking core test is not possible. The auditor further stated in his report that it was not possible to extract concrete sample since concrete is badly deteriorated so the structural auditor gave explanation why he had not carried out over test chemical analysis and cement aggregate ratio. It is undisputed fact that suit building is more than fifty years old.

13. I have gone through the TAC report, on perusal of the said report it reveals that the members of the TAC committee gave hearing to both the structural auditor. The structural consultant of defendant and structural engineer of plaintiff both present in the meeting. Both audit report considered by TAC members. The TAC members also visited the suit property, sufficient opportunity given to the structural auditor of the plaintiff to explain his report and then unanimously come to the conclusion that suit structure is dilapidated in condition, and needs to be vacated and demolish immediately. Therefore in my opinion, the TAC has not violated any major guidelines. The TAC is an independent committee having expert in the said field. Therefore the opinion of TAC can not be a question on the ground that they have accepted the structural audit report submitted by the landlord. Therefore I answer

point No.1 to 3 in negative and pass the following order.”

10. So far as the guidelines issued by the MCGM for declaring private and municipal buildings as C-1 category are concerned, it would be material to refer to the relevant portion of the guidelines which provide thus :-

“In view of above, following general S.O.P. on the lines of guidelines issued by Hon’ble Court in W.P. (L) No.1135 of 2004 and guidelines circulated by UDD of GOM on 5.11.2015 are prepared for deciding Municipal and Private buildings as dangerous/dilapidated, i.e. C-1 category.

Category	Description
C-1	Unsafe/Dangerous/inhabitable structures need to be vacated and demolished.
C-2A	Partially Unsafe/Dangerous/structures requiring Major structural repairs by partially vacating the dangerous part of structure.
C-2B	Structures requiring Major structural repairs without vacating the structure.
C-3	Minor repairs.

IV) Structural audit report mentioned in the policy shall be carried by Structural Engineer registered with M.C.G.M. which should be checked by concerned user department.

(1) Private Buildings :-

1.01) a) All the buildings having more than 30 years of age or the cases where the A.E. (B&F) & Ward

Executive Engineer have received specific complaints about dilapidated condition of the building (though less than 30 year old then notice u/s 488 of MMC Act 1888 as amended up to date shall be served upon the building) and if AE/EE comes to the conclusion that the building is dilapidated, based on the visual inspection of a particular building, by recording the same as per **Proforma-A (Annexure-1)**, A.E.(B&F) shall issue Notice under Section 353 (B) of the M.M.C. Act to the owner/occupiers/tenants of the building to carry out structural Audit from the Structural Engineer registered with M.C.G.M.

b) For arriving the age of the building, the first date of assessment or issue of Building completion certificate by corporation or issue of permission to occupy a building under section 353A or Date of physical occupation of at least 50 percent of its built up area or date of water connection whichever is earlier shall be treated as authentic.

The structural auditor shall carry out specific tests like ultrasonic pulse velocity test, rebound hammer test, half-cell potential test, carbonation depth test, and core test, chemical analysis, cement aggregate ratio as may be considered by MCGM and shall submit structural audit report in Performa B (Attached) as prescribed by MCGM.

1.02) If the owner/occupier/Tenants fails to submit the structural audit report as per the notice u/s 353B in the prescribed **Proforma-B (Annexure-2)** within 30 days from the date of service of notice, the prosecution u/s 471/472 (as applicable) under MMC Act 1888 as amended up to date shall be launched against the offenders.

1.03) On receipt of Structural audit report, the findings (Category) of the same shall be communicated to tenants/occupants by displaying it on the premises visible to all stating that tenants/occupants shall take care to safeguard the

property by propping the building wherever necessary as suggested by Registered Structural Engineer.

1.04) If the tenants/Occupants object to the findings of the Structural audit report they shall be asked to appoint their own, registered structural engineer & submit the structural audit report in **Proforma-B** within 15 days. Otherwise process will be same as per 1.07.

1.05) If the owners and/or the tenants/occupants submit conflicting structural audit report on the status of the building, the matter shall be referred to the concerned Technical Advisory Committee (T.A.C.) **(Annexure-3)** & the decision of T.A.C. will be final and binding on all the parties concerned. The Technical Advisory Committee shall give hearing to concerned structural consultants during the meeting. As far as possible, meetings of Technical Advisory Committee (T.A.C.) shall not be adjourned. For genuine reasons the meeting may be adjourned but in no case more than two adjournments shall be granted."

11. I find that the orders dated 27.07.2015 and 20.01.2016 relied on by Mr. Hardas in the case of **Union of India and another** (supra) are in the nature of interim orders passed by this Court prior to the issuance of the guidelines of 2018. The observations are in a different fact situation. In the present case, the TAC has personally inspected the suit premises and therefore the observations may not be of any assistance to the appellants. Learned counsel for the appellants then relied upon the decision of

this Court dated 10.08.2018 in the case of **M/s. Green Twig Estate Management Pvt. Ltd. and others** (supra).

The decision will have no application in the facts of the present case as the Division Bench was considering the fact situation where the TAC had proceeded only on the basis of a report submitted, which was prepared on the basis of visual inspection of Municipal Engineers. This Court observed that the entire decision making process of TAC is flawed, as without recording any reasons, the opinion of the structural consultant appointed by the petitioners has been ignored by the TAC. Their Lordships further observed that it is not the case made out by the Municipal Corporation that any of the members of the team of engineers which visited the building had done specialisation in structural engineering. In the present case, the TAC has itself visited the suit premises and carried out visual inspection. The TAC is an expert body comprising of technical experts. There is no challenge to the competency of the TAC to submit a report. The decision relied upon by the learned counsel for the appellants therefore will have no application in the

present facts.

12. In support of the submissions of learned counsel for MCGM, I may refer to the decision of this Court in **Hind Rubber Industries Pvt. Ltd. and others vs. The State of Maharashtra and others** in Writ Petition (L) No.11986 of 2022. Paragraphs 16 and 17 being relevant read thus :-

"16. But the TAC did not simply proceed on the two reports. It did not choose one over the other without further action. Its members made a site visit on 27th December 2021. Representatives of both consultants were present. The TAC noted that there are two buildings called Building 4 and Block 5. Heavy vegetation growth was seen all over Building 4. Some trees had been removed. The original structure was a composite one with load-bearing walls and double-height steel sections. The I-section beams were heavily corroded. The reinforcement and slab were exposed and corroded. The second floor was built by casting RCC column on a beam grid. These RCC columns were in distressed condition. Some of the walls were seen to be tilted at some locations on the first floor. Part of the first floor portion showed a level difference in the slab, prima facie indicating a subsidence of a part of the structure. One steel column was distorted. Information on site indicated that many years ago there was a fire. The building had remained unoccupied for a long time and had not been maintained for even longer. The brick masonry walls on the second floor were seen not to be in plumb alignment. Block No 5, the second structure, also had heavy vegetation. Its internal staircase from ground floor to all upper floors was distressed. The ground floor seemed to be all right. Half of the second floor was in distressed condition and showed heavy

leakage. Part of the slab was damaged. It had not been repaired and there were severe leakages. That part of the slab that was supported by wooden rafters was in good condition. On the south-western side, there was an old wooden staircase. It had collapsed and was not in use. There were undulations and holes to the floor on the third floor.

17. The TAC discussed the condition on site with the representatives of both consultants. Their observations and submissions are noted in the TAC report. Then the TAC members noted that having gone through both reports, the material submitted by the structural experts, the reports of the ward staff and the observation by the TAC during the site visit, the conclusion to be drawn was that the buildings were indeed dilapidated and distressed and that they might collapse at any time endangering the life of residents. Hence the buildings needed to be demolished and they were categorised as C-1."

13. In the present case, the TAC has carried out a visual inspection. Moreover, the TAC heard the structural consultants of the tenants as well as the landlord. The TAC submitted a report on the basis of the visual inspection carried out that the building is in dilapidated condition and needs to be vacated. The satisfaction of the TAC, as an expert body, is on the basis of the materials on record. The TAC has acted in terms of the guidelines dated 25.05.2018. It is pertinent to note and it is the case of the appellants themselves that the TAC found 'B' wing is in a repairable

condition whereas 'A' wing is in dilapidated condition. This clearly shows that the TAC has made its report based on the materials and on a proper assessment of the reports. The TAC is an expert body. The building is more than 50 years old. Mr. Hardas submitted that when there are two contradictory reports, the TAC should have itself carried out all mandatory tests. This contention is without any merit as the TAC report is in consonance with the guidelines. The TAC has carried out a visual inspection and had before it all the reports which it duly considered.

14. Having regard to the report of the TAC and the findings of the trial Court in the impugned order, I do not find any substance in this Appeal From Order. Hence, the Appeal From Order is dismissed. No costs.

15. At this stage, a request is made on behalf of Mr. Hardas, learned counsel for the appellants that the ad-interim order granted by this Court may be continued for a period of eight weeks from today. The request is opposed by learned counsel for the MCGM as well as learned counsel for the landlord.

16. Purely in the interest of justice and as the appellants have residing for so long, the ad-interim order granted by this Court is continued for a period of four weeks from today subject to the appellants filing undertaking to this Court within a period of three weeks from today that they will vacate the premises within a period of four weeks from today.

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

(M. S. KARNIK, J.)