

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

WRIT PETITION NO.372 OF 2021

National Insurance Ltd. and Anr. .. Petitioners

v/s.

Municipal Corporation of Greater
Mumbai and Ors.

.. Respondents

ALONG WITH

INTERIM APPLICATION NO.2474 OF 2020

National Insurance Ltd. and Ors. .. Applicants

v/s.

Municipal Corporation of Greater
Mumbai and Ors.

.. Respondents

ALONG WITH

WRIT PETITION NO.2983 OF 2021

Graviss Holdings Private Limited .. Petitioner

v/s.

The State of Maharashtra and Ors.

.. Respondents

Mr. V. Y. Sanglikar, for the petitioner in WP/372/2021.

Mr. Karl Tamboly a/w. Mr. Areez Gazdar, Mr. Rahil Shah i/by Ms. Veritas legal, for the petitioner in WP/2983/2021 and for respondent No.6 in WP/2983/2021.

Dr. Milind Sathe, Senior Advocate a/w. Mr. A. Y. Sakhare, Senior Advocate, Ms. Vandana Mahadik, Ms. Pooja Yadav i/by Mr. Sunil Sonawane, for the respondent Nos.1 to 3 in WP/372/2021 and

respondent Nos.2 to 5 in WP/2983/2021.

Mr. Amit Shastri, AGP, a/w. Mr. shamrao B. Gore, AGP – State, for respondent No.1 in WP/2983/2021.

Mr. Mayur Khandeparkar a/w. Mr. Sanket Mone, Mr. Shrey Shah i/by Mr. Sunil Sonawane, for respondent No.4 in WP/372/2021 and respondent No.7 in WP/372/2021.

**CORAM : R.D. DHANUKA &
KAMAL KHATA, JJ.
DATED : 15TH NOVEMBER, 2022.**

P.C. :

1. The petitioners in writ petition No.2983 of 2021 has prayed for a writ of certiorari for quashing and setting aside the No Objection Certificated dated 24th January 2020 issued by the Municipal Corporation in favour of the third party and for other reliefs. Interim Application No.2474 of 2020 is filed by the same petitioners in writ petition No.372 of 2021 inter alia praying for impleadment in the said writ petition.
2. Writ Petition No.372 of 2021 is filed by the National Insurance Company Limited and anr. inter alia praying for quashing and setting aside the NOC dated 24th January 2020 issued by the

Municipal Corporation for carrying out demolition in favour of respondent No.4 and also impugning the recommendations made by the Technical Advisory Committee in the report and order dated 16th September 2019. By consent of parties both the writ petitions were heard together and are being disposed off by common order.

3. Insofar as the writ petition No.2983 of 2021 is concerned, the petitioners claims certain rights in respect of the ground floor tenement of the building Lamba house. The petitioners claims those rights from the petitioners Insurance Company i.e. National Insurance Company Limited.
4. Mr. Tamboly, learned counsel for the petitioners agitated three issues before this Court i.e. (i) Petitioner was not put to any notice by the Technical Advisory Committee before passing the impugned order. (ii) The Technical Advisory Committee has not carried out any testing before declaring the writ property under C-I category. (iii) The Technical Advisory Committee has not recorded any findings as to why the report submitted by the Mahimtura Consultants was ignored and as to why reports submitted by the VJTI were preferred in the impugned Technical

Advisory Committee's report.

5. The arguments advanced by Mr. Tamboly were countered by Dr. Sathe, learned Senior Counsel for Municipal Corporation and by Mr. Khandeparkar, learned counsel for the respondent No.4.
6. Our attention is invited to the various correspondence exchanged between the Insurance Company and the clients of Mr. Tamboly regarding the notices issued by the Municipal Corporation from time to time under Section 353(b) followed by Section 354 of the Mumbai Municipal Corporation Act. It is brought to the notice of the petitioners from time to time by the Insurance Company that the Municipal Corporation had proposed to take action to declare the writ property in dilapidated condition and to take appropriate action. The correspondence was exchanged between the petitioners with the Insurance Company in this regard which are forming part of the record.
7. We have perused the order passed by the Technical Advisory Committee which clearly indicates that the petitioner was aware of the notices issued by the Technical Advisory Committee and the reports submitted by Mahimtura and Consultants. The petitioners

did not chose to appear before the Technical Advisory Committee. Mr. Tamboly does not dispute that his clients had also obtained a separate report from Mahimtura and Consultants in respect of the entire property including the ground floor structure. It is also not in dispute that the Mahimtura and Consultants had appeared before the Technical Advisory Committee from time to time and the Committee considered the report submitted by Mahimtura in respect of the entire building including the structure obtained by Mr. Tamboly's clients. There is thus, no substance in the submissions of Mr. Tamboly, learned counsel for the petitioners that the petitioner was not put to any notice by the Technical Advisory Committee before passing the impugned order by the Technical Advisory Committee. The report indicates that the petitioner was called upon to submit structural audit report but did not submit.

8. Insofar as the submissions of learned counsel that the TAC has not carried out any testing is concerned, the Technical Advisory Committee's report clearly indicates that all the reports submitted by the parties showing some of the tests were considered by the Technical Advisory Committee and after hearing the consultants representing the parties and after site visit, the Technical Advisory

Committee clearly opined that the building was completely dilapidated and rightly classified under C-I category and required to be evacuated and demolished. The Technical Advisory Committee clearly opined as to why the reports of Mahimtura Consultants was not considered and preferred to consider the report of VJTI. No other arguments were advanced by Mr. Tamboly.

9. The Writ Petition filed by the petitioners in Writ Petition No.2983 of 2021 deserves to be rejected on this ground.

10. We shall now consider the arguments advanced by learned counsel for the parties in Writ Petition No.372 of 2021. Mr. Sanglikar, learned counsel for the petitioner - Insurance Company invited our attention to the order passed by the Technical Advisory Committee and submitted that the Technical Advisory Committee could not have considered the report submitted by the VJTI. He did not dispute that his clients had appeared before the Technical Advisory Committee through Mahimtura Consultants. Learned counsel for the petitioner submitted that though several documents were brought to the notice of the Municipal Corporation regarding the title of the

petitioner in respect of the writ property, the Municipal Corporation deliberately granted NOC in favour of respondent No.4 for carrying out demolition of the writ property.

11. It is submitted by learned counsel that the Technical Advisory Committee has not carried any test before coming to the conclusion that the building was to be declared as dilapidated under C-I category. He submitted that in the year 2017, the Municipal Corporation itself admitted before this Court in the earlier Writ Petition that the building could be repaired and was not required to be demolished. He submitted that in the year 2019, the writ property was not included under the C-I category issued by the Municipal Corporation. He submitted that the entire structure of the Municipal Corporation is at the behest of the builder. He relied upon certain photographs annexed at page No.308 to 311 of the writ petition.

12. Dr. Sathe, learned senior counsel for the Municipal Corporation submitted that the petitioner – Insurance Company has not laid any foundation in the pleadings that the order passed by the Technical Advisory Committee is vitiated. He invited our

attention to the grounds (i) and (j) to the writ petition and submitted that on these vague grounds, this Court cannot interfere with the order passed by the Technical Advisory Committee.

13. It is submitted by learned senior counsel that in the correspondence exchanged between the petitioner – insurance company and the Municipal Corporation, it was clearly admitted by the petitioner that building was in dilapidated condition. The petitioner itself had warned the occupants to vacate the premises forthwith to avoid any untoward incident. In support of this submission he invited our attention to various correspondence exchanged between the parties.

14. Insofar the issue as to whether the Municipal Corporation could have issued NOC to carry out demolition of the writ property is concerned, learned senior counsel invited our attention to some of the correspondence and part of the averments made by the Municipal Corporation in the affidavit filed before this Court and submitted that the Municipal Corporation in the facts of this case was justified in issuing NOC

in favour of respondent No.4 for carrying out demolition.

15. Learned senior counsel invited our attention to the findings rendered by the Technical Advisory Committee in the impugned report. It is submitted that this Court cannot interfere with those findings recorded by the Technical Advisory Committee.

16. Mr. Khandeparkar, learned counsel for respondent No.4 on the other hand invited our attention to various correspondence annexed to the compilation filed by his clients and more particularly the letters at page Nos.141, 151 in support of the submission that the insurance company itself had clearly admitted time to time that the condition of the building was dilapidated and thus the occupants should vacate forthwith to avoid any untoward incident. The petitioner cannot be allowed to challenge the order of the Technical Advisory Committee contrary to the stand taken in the correspondence exchanged between the parties.

17. It is submitted by the learned counsel that as a matter of record, the insurance company had also put up a notice board

outside the writ property thereby warning the occupants about the dangerous condition of the writ property and asking them to vacate at the earliest to avoid any untoward incident.

18. Insofar as the NOC issued by the Municipal Corporation in favour of his clients is concerned, the learned counsel on instructions states that his client has no objection, if the building is directed to be demolished by the Municipal Corporation. Statement made by the learned counsel is accepted.

19. Insofar as the first issue raised by Mr. Sanglikar, learned counsel for the petitioner – Insurance Company about the correctness of the order passed by Technical Advisory Committee is concerned, a perusal of the grounds (e) and (g) in the petition would clearly indicate that only ground raised by the petitioner is that the Technical Advisory Committee appears to be incorrect and improper apparently encroached by the construction and that there is no explanation of the Technical Advisory Committee report as to why categorization has changed, based only on the report of the structural engineer of the respondent No.4.

20. There is no foundation led in the writ petition as to why and how the order passed by the Technical Advisory Committee can be faulted with.

21. Be that as it may, the correspondence and record produced by the parties would clearly indicate that it was admitted by the insurance company that the condition of the building was absolutely dilapidated. On the basis of the notice issued by the Municipal Corporation from time to time, the petitioners had in fact warned all the occupants with the intimation that the condition of the building is dilapidated and thus, shall vacate their tenements to avoid any untoward incident.

22. The learned counsel could not dispute before this Court that the condition of the building is dilapidated and that petitioner had put up the notice board by way of warning to all the occupants to vacate their respective tenements in view of the condition of the building having been dilapidated. We are thus not inclined to accept the submission made by the learned counsel for the petitioner that the findings of the Technical Advisory Committee is based on no material on record or is contrary to the factual position on record. On the contrary the arguments advanced by

the learned counsel for the petitioner are contrary to the stand taken in the correspondence exchanged between the parties forming part of the record.

23. Be that as it may, a perusal of the report submitted by the Technical Advisory Committee clearly indicates that the Technical Advisory Committee has compared the opinions in all the three reports while coming to the conclusions that the condition of the building is dilapidated and thus deserved to be classified under C-I category. The Technical Advisory Committee had also visited the site and thus considered various tests reports referred in the report submitted by the parties. The Technical Advisory Committee being consisting of experts having opined that the building is in dilapidated condition after considering the material produced on record. This Court is not an expert to substitute the findings recorded by Technical Advisory Committee by way of finding different than such findings recorded by the Technical Advisory Committee.

24. Insofar the issue as to whether NOC was rightly granted in favour of respondent No.4 for carrying out demolition is concerned, in our view this argument need not detain this Court

further in view of the statement made by Mr. Khandeparkar, learned counsel for respondent No.4 that though NOC granted in favour of his clients, his clients have no objection if the demolition is carried out by the Municipal Corporation. We accept the statement made by learned counsel for the respondent No.4.

25. In view of the rival contentions about the title in respect of the writ property between the petitioner and the respondent No.4, this Court cannot decide the disputed questions of title in this petition, which may have some bearing on the issue of NOC in favour of one of the party by the Municipal Corporation for carrying out demolition. We modify the order passed by the Municipal Corporation by passing an order and direction against the Municipal Corporation to demolish the writ property within a period of four weeks. As far as expenses incurred if any, for demolition of the writ property is concerned, it shall be borne by both the parties i.e. petitioner as well as respondent No.4 in writ petition No.372 of 2022 without prejudice to their rights and contentions against each other insofar as issue of title is concerned. It is made clear that merely because both these parties pay the cost in the ratio of 50% each to the Municipal

Corporation within two weeks from the date of requisition that would be made by the Municipal Corporation upon these parties without fail, this order would not amount to adjudication of the rival claims insofar as the title to the property is concerned.

26. Our attention is invited by the learned senior counsel for the Municipal Corporation that order dated 5th February 2020 passed by Division Bench of this Court, directing the Municipal Corporation to get every floor including basement of the subject building measured in the presence of the representatives of all the parties to submit the measurement sheet to this Court on 10th November 2020 has been implemented. Statement is accepted. The report is already placed on record by the petitioner itself in these proceedings.

27. It is common ground that all the occupants of the writ property have already vacated their respective tenants. The Municipal Corporation has already disconnected water and electricity connection of the building three years back.

28. The application made by Mr. Sanglikar, learned counsel for the petitioner for seeking stay of the operation of the order passed

by this Court today is rejected.

29. Both the Writ Petitions are dismissed with aforesaid directions. No order as to costs.

30. In view of the disposal of the writ petitions, interim application pending if any, stands disposed off.

(KAMAL KHATA, J.)

(R.D.DHANUKA, J.)