

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.736 OF 2023
WITH
INTERIM APPLICATION NO.150210F 2023
IN
APPEAL FROM ORDER NO.736 OF 2023

Nazare Alam Abdul Bayan & Ors.APPELLANTS

VS

Municipal Corporation of
Greater Mumbai & Ors.RESPONDENTS

...

Mr. Mohammed Zain Khan a/w Mr. Dawish Ansari for the
Appellants/Applicants.

Ms. Smita Tondwalkar for Respondent-MCGM.

...

CORAM: SANDEEP V. MARNE, J.

DATE : SEPTEMBER 08, 2023.

P.C.:

1 The Appellants in this Appeal challenged order dated 20 July 2023 passed by the City Civil Court rejecting ad-interim relief in the Draft Notice of Motion tendered by the Appellants. In that Draft Notice Of Motion Appellants challenged the order of the Technical Advisory Committee (**TAC**) dated 10 May 2023 by which the Committee directed appointment of third party structural auditor like IIT for carrying out structural audit of the building.

2 The learned Counsel appearing for the Appellants would submit that it was not necessary for the TAC to appoint any third party structural auditor since Veermata Jijabai Technological Institute (**VJTI**) has already submitted a structural audit report in pursuance of requisition made by the MMRDA. That since a structural audit report of independent reputed institution is already on record, it was not necessary for the TAC to appoint one more structural auditor like IIT to carry out the structural audit.

3 It appears that there are two contradictory reports submitted by the Appellants and the Society regarding structural audit of the building. In view of such reports, the City Civil Court passed order on 20 March 2023 directing TAC to consider the contrary structural reports on record and send its opinion about the suit building. After the matter has reached TAC, it has taken a decision on 10 May 2023 to appoint third party structural auditor like IIT.

4 The learned Counsel appearing for the Respondent-MCGM would submit that in pursuance of the decision of TAC dated 10 May 2023 IIT has been appointed to carry out the structural audit of the suit building. She would further submit that the Appellants are however not permitting the members of the structural auditing to inspect the building.

5 As observed earlier the only reason for the Appellants to oppose further inspection of the building, through IIT is report submitted by the

VJTI at the instance of the MMRDA. In my view, since TAC has been directed by the City Civil Court by its order dated 20 March 2023 to consider the contrary reports and give its opinion, TAC is entitled to appoint its own structural auditor. This would in fact give a clear picture to the TAC after considering four reports namely, report submitted by Appellants, Society, VJTI as well as IIT.

6 In that view of the matter, the present Appeal is disposed of by directing TAC to take into consideration the report of VJTI also while making its recommendations based on the two contrary reports as well as the report that would be submitted by IIT. The learned Counsel for the Appellants makes a statement that the Appellants shall not create any obstruction to the team of Structural Engineers nominated by TAC who are carrying out the inspection of the suit building. With the above directions, I dispose of the Appeal.

7 In view of the disposal of the Appeal, the Interim Application also disposed of accordingly.

(SANDEEP V. MARNE, J.)