

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****APPEAL FROM ORDER NO. 775 OF 2023**

Bhojraj Bhavan Tenants Committee

and Ors.

....Appellants

V/s.

Municipal Corporation of Greater Mumbai

and Ors.

....Respondents

Mr. Diwakar Dwivedi, for the Appellants.

Ms. Smita Tondwalkar, for the Respondent.

Mr. Tari, AE (B & F), Dept, K/E. Ward for B.M.C. Present.

CORAM : SANDEEP V. MARNE, J.

Dated : 22 December 2023.

P.C. :

1. The challenge in the present Appeal is to the Order dated 29 August 2023 passed by the City Civil Court disposing off Notice of Motion No. 2921 of 2023 by directing the Municipal Corporation to refer the case to the Technical Advisory Committee (TAC) for the purpose of making recommendations. Perusal of the Order passed by the City Civil Court would indicate that the Court

has erroneously assumed that there are two conflicting reports. So far as Plaintiff/Appellant are concerned, they have relied upon two reports of Vastu Vishwa dated 19 July 2022 and M/s. Manoj V. Sathe dated 5 July 2023. Both the reports classify the building in 'C-2B' category. As against the reports of the two Structural Auditors, the official of the Municipal Corporation has classified the building in 'C-1' category merely on the basis of virtual inspection. Such classification based on virtual inspection of the Municipal Corporation is erroneously presumed as a conflicting structural audit report by the learned Judge of the City Civil Court. The Municipal Corporation has otherwise not carried out any structural audit at its behest.

2. In that view of the matter, it cannot be stated that there are conflicting structural audit reports relating to the building of the Appellants. In that view of the matter, reference of the case to TAC is not at all warranted. The City Civil Court has erred in passing Order dated 29 August 2023. The impugned notice therefore is rendered infructuous.

3. The issue remains is about carrying out repairs in pursuance of C-2B classification by the Auditor of the Appellant/Plaintiffs. The learned counsel for the Appellants would submit that Appellants have already submitted to the Municipal Corporation seeking its permission for carrying out the necessary repairs at the building. It is Ms. Tondwalkar's contention that the proposal is incomplete and has accordingly not been sanctioned. The Appellant to forthwith comply with the defects in the proposal

so that the Municipal Corporation can taken up the same for sanction. Immediately, after receipt of the sanction of the Municipal Corporation, the Appellant shall carry out the necessary repairs at the building.

4. If the Appellants fail to procure permission and/or carry out repairs of the building, the Municipal Corporation will be at liberty to issue fresh notice under the provisions of Section 353B of the Mumbai Municipal Corporation Act. In that view of the matter, the impugned Notice dated 6 July 2022 would not survive. The suit itself has been worked out. The Appellant shall file a formal application before the City Civil Court seeking withdrawal of the suit. The Appeal is **disposed of**.

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SANDEEP V. MARNE, J.