

... Appellant

**Municipal Corporation of Greater
Mumbai and Anr.**

... Respondents

Mr. Rohaan Cama with Mr. Shanay Shah, Mr. Dhiren Durante, Ms Ruchi Magoo i/by
Lexicon Law Partners, for Appellant.
Mrs Smita Tondwalkar, for Respondents.

CORAM: N.J.JAMADAR, J.

DATE: 2 AUGUST 2023

P.C.

1. Heard the learned Counsel for the parties.
2. The challenge in this appeal is to an order dated 28 September 2022 passed by the learned Judge, City Civil Court in Notice of Motion No.2026 of 2019 in L.C.Suit No.1432 of 2019 whereby the Notice of Motion taken out by the Appellant-Plaintiff to restrain the Respondent-Corporation from acting upon a notice dated 10 June 2019 issued under Section 354 of the Mumbai Municipal Corporation Act, 1888, in respect of the ground floor structure admeasuring 1250 sq.ft. in the building Sai Ashram, situated on the land bearing CTS No.C-941/B at Pali Hill, Bandra (W), Mumbai, came to be dismissed.
3. The learned Judge, City Civil Court was of the view that the Respondent

– Corporation based on the structural audit report had initially served a Notice under Section 353B and, thereafter, the impugned Notice and there was no reason to restrain the Respondent-Corporation.

3. During the pendency of this Appeal, by an order dated 20 October 2022, this Court permitted the Appellant to tender report dated 14 October 2022 of the Structural Engineer appointed by the Appellant before the Technical Advisory Committee (TAC). After considering the said report and the report of Sardar Patel College of Engineering, an independent structural auditor, TAC, in its meeting held on 12 July 2023, has opined that the structural audit report submitted by the third party structural auditor – Sardar Patel College of Engineering, deserves to be relied upon and, thus, confirmed the said report.

4. The TAC has categorized the ground plus two load bearing structure at the site, as C-2B, which does not require eviction and major structural repairs. Whereas, third and fourth floor structures are declared in C-1 category. TAC has, thus, opined as under :

“Therefore, TAC members have unanimously concluded that Structural Audit Report submitted by Third Party Structural Auditor M/s. Sardar Patel College of Engineering is confirmed and the said building known as ‘Sai Ashram’ situated at Survey No.241 CTS No.C/941, Dr. Ambedkar Road, Bandra (W), Mumbai – 400 050 in H/West Ward is declared as C-2B category (Gr.+2 load bearing structure) and C-1 category (3rd and 4th floor which is vertical extension by way of erecting external peripheral RCC columns) i.e. the third and fourth floor should be carefully demolished

under the supervision of structural consultant such that the demolition should not cause any damage to the G+2 load bearing structure. The G+2 load bearing structure can be occupied during repair work but needs to be vacated during demolition on 3rd and 4th floor.”

5. In view of the aforesaid report of TAC, the foundational premise of the notice under Section 354 of the Act, 1888 gets dismantled. The Appeal, thus, deserves to be allowed as it pertains to the ground floor of the suit building which has been, based on the report of the third party Structural Auditor, categorized as C-2B, by the TAC.

6. Hence, the Appeal stands allowed.

7. The impugned order dated 28 September, 2022 stands quashed and set aside.

8. Interim Application also stands disposed.

9. In view of this order, nothing remains in Suit No.1432 of 2019 and, thus, the same stands also disposed.

10. It is, however, clarified that the concerned parties and the Municipal Corporation shall take action in conformity with the aforesaid observations of TAC.

11. No costs.

(N.J.JAMADAR, J.)