

Ashwini

REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8277 OF 2021

1. **SAKHARAM SHANKAR NAVASARE,**
Age: 71 Years, Occupation: Retired
Room No. 1, Kaka Patil Chawl,
Chavindra, Bhiwandi, Dist Thane.
2. **ARUNDHATI SHRINIWAS NAIR,**
Age: 68 Years, Occupation: House wife,
Room No. 2 & 8, Kaka Patil Chawl,
Chavindra, Bhiwandi, Dist Thane.
3. **LADAM KARIM LADAF,**
Age: 64 Years, Occupation: Labour
Room No. 4, Kaka Patil Chawl,
Chavindra, Bhiwandi, Dist Thane.
4. **SUDHAR BABURAM THIYAR,**
Age: 66 Years, Occupation: Labour,
Room No. 7, Kaka Patil Chawl,
Chavindra, Bhiwandi, Dist Thane.
5. **GANESH SAIANNA PILEMANI,**
Age: 55 Years, Occupation: Labour,
Room No. 7, Kaka Patil Chawl,
Chavindra, Bhiwandi, Dist Thane.
6. **DALBINDAR NIRMAL SINGH,**
Age: 64 Years, Occupation: Labour,

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Room No. 5, 6, 12, Kaka Patil Chawl,
Chavindra, Bhiwandi, Dist Thane.

... PETITIONERS

~ VERSUS ~

1. **STATE OF MAHARASHTRA,**
Through Government Pleader,
Civil Appealed Side, High Court
Building, Bombay High Court,
Mumbai.
2. **BHIWANDI NIJAMPURA CITY
MUNICIPAL CORPORATION,
BHIWANDI,**
Through Commissioner, Juni Jakat
Naka, O/p. Tahsildar Office, Bhiwandi.
Dist Thane.
3. **DILIP KHANE,**
Assistant Commissioner, Prabhag 1,
2nd Floor, Old Municipal Corporation,
Juni Jakat Naka, O/p. Tahsildar Office,
Bhiwandi. Dist Thane.
4. **JAYMALA ASHOK PATIL,**
Age: Adult, Occupation: Business.
5. **ANMOL ASHOK PATIL,**
Age: Adult, Occupation: Business.
6. **UJJAWAL ASHOK PATIL (UJJWLA
RAJU PAWAR),**
Age: Adult, Occupation: Business.
7. **SHUSMITA ASHOK PATIL
(SHUSMITA KAPIL BHOIR),**
All 4 to 7 Residing at Ashok Patil Nivas
B/h Shiv Mandir Chavindra, Bhiwandi,
Dist. Thane.

... RESPONDENTS

APPEARANCES

FOR THE PETITIONER	Mr RR Tripathi.
FOR RESPONDENT NO. 2	Mr Rajesh A Tekale.
FOR RESPONDENTS NOS. 4 TO 7	Mr Ramesh Dube Patil, with Rajesh Tekale & Swaraj Subhash Patil, i/b Jay & Co.
FOR RESPONDENT- STATE	Ms Molina P Thakur, AGP.

**CORAM : GS Patel &
Kamal Khata, JJ.**

DATED : 5th March 2024

ORAL JUDGMENT (Per GS Patel J):-

1. This Petition is tagged with Writ Petition No 6923 of 2021. Both have different considerations and therefore we will not make a common order.
2. There is an ad interim order of 7th December 2021. It stated that the chawl, that is the subject matter of the Petition, would not be demolished until the next date. It was made clear that the Petitioners would reside in the chawl at their own risk, and they alone would be reasonable for any mishap.
3. Having heard parties fully today, we believe that on any rational approach, this Petition is thoroughly misconceived. The chawl in question is located at 115 Chavindra, Bhiwandi.

Respondents Nos 4 to 7 are said to be the owners of the structure. The six Petitioners claimed to be tenants of the structure.

4. The dispute is essentially in regard to the structural stability of the building. The submission is that there is an order of 27th July 2021 of the Technical Advisory Committee (“TAC”) constituted by the Bhiwandi Nizampur City Municipal Corporation (“BNCMC”) which is faulty and which we should substitute with our own finding. The TAC report says the building is dilapidated and dangerous, in the C-1 category, and ought to be pulled down. The Petitioners say it can and should be repaired. We are asked to reverse the expert opinion of the TAC and substitute it with our own view that the Petitioners’ consultants’ report — that it can be repaired — should be preferred.

5. We are doing no such thing. We cannot do any such thing.

6. This line of argument, that reports of the TAC are amenable to judicial review on merits, and that a writ court will substitute its view on technical matters, is now wearying. The time has come to give it the burial it deserves, twenty fathoms deep.

7. By way of background, the entire conceptualization of the TAC began with an interim order dated 23rd June 2014 by a Division Bench of this Court in Writ Petition (L) No 1135 of 2014 (later finally numbered as Writ Petition No 1080 of 2015), *Municipal Corporation of Greater Mumbai v State of Maharashtra & Ors*. There, a Division Bench of this Court made an interim order on 23rd June

2014 on a case presented to it that buildings that were otherwise structurally sound, or at best required repairs, were being declared as structurally unsafe, unfit for human habitation, ruinous and dangerous and were being ordered to be pulled down. The allegation was that this was done at the instance of rapacious landlords and property owners with the active connivance of municipal officials. The Court therefore, framed a series of guidelines by its order dated 23rd June 2014. The interim order framed these guidelines:

9. Accordingly, for the present, in the absence of any policy in that behalf, the following guidelines are issued:-

a) The present order will be applicable only in respect of those buildings which are highly dilapidated and dangerous and/or classified in Category C-1 by the Corporation, whether owned by a private party or by the Corporation or any other authority and in respect of which building, either a notice under section 354 has been issued or the Corporation has issued a Letter of Evacuation to their tenants and/or occupiers of the buildings.

b) The Corporation will, before classifying a building under category C-1, conduct their own independent inspection and assessment with the help of the Engineers of their Department and carry out a survey of such building(s). The report of Structural Audit shall be taken into account.

c) The Corporation shall consider the report of Structural Engineer appointed by the owners and/or occupants classifying the building as dilapidated and dangerous. If the owners and/or the occupants bring conflicting reports on the status of the building, the Corporation shall refer the matter to Technical Advisory Committee (TAC) under the Chairmanship of Director (ES & P) with at least 3 other members, viz. City Engineer, Chief Engineer (DP) and Chief Engineer (P & D).

- d) The TAC shall:
- i) Carry out a visual inspection of the state of the internal and external plaster, plumbing, drainage, whether the doors and windows close properly, whether steel in columns is exposed, whether there is settlement in the foundation, deflections/sagging, major cracks in columns/beams, seepages/leakages, staircase area and column condition, lift well walls, U.G. tank, O.H. tank column condition, parapet at terraces, chhajjas, common areas, terrace water proofing.
 - ii) Carry out specific tests like ultrasonic pulse velocity test, rebound hammer test, half cell potential test, carbonation depth test, core test, chemical analysis, cement aggregate ratio as may be considered by TAC as necessary.
- e) If it is found after due notice that the building(s) is in a highly dangerous or in dilapidated condition, then in that event, the Corporation shall also make a list of the names of the tenants and/or occupiers in the said building and the carpet area of the premises in their respective occupation and possession including the floor at which the same has been occupied.
- f) A copy of such list will be furnished to the landlord and/or owner/builder of the said building. The Corporation thereafter, will issue a notice under section 354 of the said Act calling upon such tenants and/or occupiers to vacate the said premises and if such notice under section 354 of the said Act has already been issued, then in that event the Corporation will give 7 days' notice to such tenants/occupiers, copies whereof will be furnished to the landlord for vacating the said building(s). If such tenant and/or occupier is not available, the Corporation shall affix

such notice or Letter of Evacuation on any part of such premises.

g) The Corporation shall then take steps to turn off the water, supply, electric power and gas to such building immediately before the removal of occupiers.

h) In the case of a municipal owned building(s), the Corporation will issue Letter of Evacuation to every person in occupation of the said building or part thereof to vacate the said building along with their belongings within the said period of 7 days from date of issuance of such notice of Letter of Evacuation in respect of municipal owned building(s). The notice issued to such occupiers shall contain the name of the occupier and the area in his occupation and also the floor at which the premises are located. In case, if such tenant and/or occupier is not available, the Corporation shall affix such notice or Letter of Evacuation on any part of such premises.

i) In the event, a person occupying such tenement whether of the privately owned building(s) or building(s) owned by Corporation or any other authority refuses to vacate the said premises, then the police shall remove such person from the said premises by using nominal force if required for the same.

j) The police may use such force as is reasonably necessary to remove such person and/or occupiers and/or allottee along with their belongings from the said premises, without causing damage to their movables.

k) The Corporation may then demolish such dangerous and dilapidated building.

l) The rights of the tenants and/or occupiers and/or owners in respect of the said premises/property will not be affected by virtue of evacuation or demolition carried out by the Corporation of such dilapidated and dangerous building

in exercise of the power under section 354 of the said Act or by virtue of the fact that the Corporation is the owner of the premises. Such tenant and/or occupier and/or owner will be entitled to re-occupy the premises in respect of the same area after the reconstruction of the building, subject to the prevalent provisions of law pertaining to redevelopment of the property or subject to any arrangement or agreement arrived at by and between such tenants and/or occupiers with the owner of the building. Any action of evacuation/removal/demolition will not affect the inter se rights of owners if there be more than one owner or there is a dispute as to the title of the property.

m) If there are any pending suits/proceedings and there are any restraint orders passed, the Corporation shall be free to apply for vacating and/or modifying such orders, which applications shall be decided on its own merits and in accordance with law.

n) In respect of the Municipal buildings, it shall be the duty of the Corporation to provide alternate accommodation as early as possible in any of their premises to such tenant and/or occupier of the Corporation owned building till and until the said building is reconstructed by the Corporation or the tenancy of any of such occupier is determined in accordance with law.

o) In respect of the private owned buildings, if such building falls in cessed category as contemplated under the provisions of the Maharashtra Housing and Area Development Act, 1976, then in that event, it will be the duty of MHADA/MBR & RB to provide temporary alternate arrangement in a transit camp for transit accommodation, in accordance with law, as early as possible.

p) In case privately owned buildings are demolished by the Corporation in exercise of power under Section 354

read with the present order, then the Corporation shall, while granting sanction of redevelopment, impose a condition in IOD (Intimation of Disapproval) that no Commencement Certificate will be issued under section 45 of the MRTP Act, 1966 unless and until an Agreement either providing a Permanent Alternate Accommodation in a newly constructed building or a settlement is arrived at by and between the tenants and/or occupiers and the landlord in respect of the said demolished premises, is filed with the Corporation at the earliest.

q) In case of buildings which have suddenly collapsed, to determine the reasons for such collapse, it is desirable that forthwith a Committee be constituted headed by a former Municipal Commissioner and consisting of Former Chief Engineer of MHADA along with a Professor of VJTI and a Professor of IIT, Powai having expertise in Structural Engineering as also an employee of the Corporation, holding a post not lower than that of the Director (E.S. & P.) and such Committee will determine the cause of such collapse and inter-alia identify whether any Architect and/or Consultant and/or Municipal officers or other person/s is/are responsible in any manner whatsoever for such a collapse. The reference to the Committee will not in any way be a hindrance in the criminal investigations/proceedings that may have commenced or may be commenced under the relevant criminal law. This no way would restrict the State of Maharashtra to pass appropriate order for any such inquiry or investigation.

8. The Writ Petition was ultimately disposed of by a Division Bench of this Court (AS Oka, J, as he then was and RI Chagla, J) on 28th February 2018.¹ By that time, the Municipal Corporation of

¹ 2018 SCC OnLine Bom 816.

Greater Mumbai (“MCGM”) had adopted the guidelines framed by the interim order of 23rd June 2014. An earlier version of these ‘policy guidelines’ of the Municipal Corporation of Greater Mumbai (“MCGM”) were put on Affidavit before the Division Bench (of Oka J, as he then was and RI Chagla J) at the final disposal of the Petition. The final policy guidelines are of 25th May 2018, captioned ‘GUIDELINES FOR DECLARING PRIVATE AND MUNICIPAL BUILDINGS AS C-1 CATEGORY (DANGEROUS, UNSAFE)’.

9. Some of the observations in the final order disposing of that Writ Petition are important for our purposes today. The Division Bench said:

5. The necessity of passing interim order dated 23rd June 2014 was the absence of a policy or guidelines. That is very clear from the observations made in the paragraph 8 of the said order. In view of the policy guidelines which are placed on record by the affidavit dated 8th February 2018 as modified on 23rd February 2018 now it is no longer necessary for this Court to exercise Writ Jurisdiction by issuing policy guidelines. We may make a useful reference to the decision of the Apex Court in the case of *Census Commissioner v. R. Krishnamurthy* [(2015) 2 SCC 796]. In paragraph 25 of the said decision, the Apex Court reiterated the well settled legal position that it is not within the domain of the Court to legislate and it is the function of the Courts to interpret the law by adopting certain creative process. In paragraph 25, the Apex Court observed thus:—

“25. Interference with the policy decision and issue of a mandamus to frame a policy in a particular manner are absolutely different. The Act has conferred power on the Central Government to issue notification regarding the manner in which the census has to be carried out and the Central Government has issued notifications, and the competent authority has issued directions. It is not within the domain of the court to legislate. The courts do interpret the law and in such interpretation certain creative process is involved. The courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. **The court may also fill up the gaps in certain spheres applying the doctrine of constitutional silence or abeyance. But, the courts are not to plunge into policy-making by adding something to the policy by way of issuing a writ of mandamus. There the judicial restraint is called for remembering what we have stated in the beginning. The courts are required to understand the policy**

decisions framed by the executive. If a policy decision or a notification is arbitrary, it may invite the frown of Article 14 of the Constitution. But when the notification was not under assail and the same is in consonance with the Act, it is really unfathomable how the High Court could issue directions as to the manner in which a census would be carried out by adding certain aspects. It is, in fact, issuance of a direction for framing a policy in a specific manner.”

(Emphasis in the original order)

6. Therefore, in the light of the policy guidelines adopted by the said Corporation, **it will not be appropriate for this Court to add to the policy or to amend the said policy especially when this Court is not called upon to decide the legality and validity of the policy.**

(Emphasis added)

10. The interim order could not have been binding. The only reason the Division Bench at final disposal did not set those aside fully was because the so-called guidelines in the interim order had been adopted by the MCGM as its own. But these have remained in the form of policy guidelines; that is to say, entirely unsupported by statute.

11. We had occasion to visit some aspects of this law in a Division Bench judgment (one of us GS Patel, J was a member of that Bench with Gauri Godse, J) in *Hind Rubber Industries Pvt Ltd & Ors v State of Maharashtra & Ors*.² A brief background is also set out in our judgments in *Andheri Purab Paschim Cooperative Housing Society Ltd v Municipal Corporation of Greater Mumbai & Ors*,³ and later in *Kishore Satyani v Municipal Corporation of Greater Mumbai & Ors*.⁴ In *Andheri Purab Paschim*, we held:

5. What is being persistently misunderstood and misconstrued is the jurisprudential impact of these guidelines (irrespective of the source). **These were to provide some sort of checks and balances against arbitrariness and unilateralism in public action, i.e., in the actions of the Municipal Corporation, an instrumentality of the state within the meaning of Article 12 of the Constitution of India, such actions always being susceptible to judicial review under Article 226 of the Constitution of India. The guidelines were not meant to, and could not, legislate. They were not intended to create new statutory or vested rights.**

6. The Technical Advisory Committee (“TAC”) set up by these guidelines is a technical expert body. Its constitution is drawn from experts from the Municipal Corporation itself. What this has unfortunately generated is a whole new species of litigation where the TAC’s expert opinion on technical structural engineering matters is now seen or said to be some sort of administrative or quasi-judicial action rather than what it is, i.e., a factual report on technical aspects of

2 2022 SCC OnLine Bom 1640 : (2023) 1 Bom CR 342.

3 2023 SCC OnLine Bom, 2522 : (2023) 5 Bom CR 515.

4 Writ Petition 19 of 2023, decided on 10th October 2023; Neuturl Citation: 2023:BHC-OS:11669-DB.

structural stability. Therefore, TAC reports and recommendations are now being perennially sought to be subjected to judicial review of a Writ Court under Article 226 of the Constitution of India.

7. The TAC is not a quasi-judicial nor an administrative body. Other than a procedural irregularity or some form of violation of the principles of natural justice or a violation of Article 14 of the Constitution of India that is facially demonstrated, no interference is possible with the recommendations of the TAC.

8. In any view of the matter, it is not possible to substitute the opinion of a TAC with an opinion of a court, least of all the Writ Court.

9. Where there are conflicting views about the structural stability of a building, and unless the TAC report is shown to be vulnerable in law for one or more of the reasons well established in law for interference by a writ court, a court cannot possibly interfere at the behest of one party.

(Emphasis added)

12. The starting principle for the 28th June 2014 interim order was that perfectly sound buildings were being brought down for redevelopment.

13. Today we are forced to ask a question: *therefore what?* An owner of immovable property is entitled to enjoy the full development potential and fruits of the development of the property. An owner does not need a tenanted building to be 'dilapidated' before it is taken up for redevelopment. There is

nothing in the Maharashtra Rent Control Act, 1999 (“**Rent Act**”) that prohibits redevelopment or allows tenants to dictate to an owner the form, type, preconditions or time when that redevelopment can take place, so long as the tenancy is protected. And indeed, the tenancies are fully protected, as we have repeatedly noted, both under the provisions of the Rent Act and under the relevant provisions of the Mumbai Municipal Corporation Act, 1888 (“**MCGM Act**”) and cognate statutes.

14. To view it any other way would effectively amount to saying that tenants by virtue of tenancy including those on low standard rents are entitled to expropriate the ownership rights of individual owners of properties. That is inconceivable and indeed no statute could possibly provide for this, let alone an interim order of a Court. In *Tushar Ranglidas Notaria v Municipal Corporation of Greater Mumbai*,⁵ a Division Bench of which one of us (GS Patel J) was a member considered the legal position in such situations.⁶ In paragraphs 3 and 4, the Court said:

3. The conspectus of the petition is almost identical to nearly two dozen petitions we have heard and dealt with in the last two or three months: tenants of a building that is over 30 years old having received an evacuation notice from the MCGM, and having taken no steps by themselves or by compelling the owner to carry out essential structural repairs, then rush to court and claim (a) that the building does not need demolition or evacuation; (b) that it is structurally sound; and (c) that the petitioner-tenants will

⁵ 2019 SCC OnLine Bom 1798 : (2020) 1 Bom CR 559.

⁶ The SCC OnLine report inaccurately portrays Tushar Notaria as being a single-judge bench decision. It was actually rendered by a Division Bench of SC Dharmadhikari and GS Patel JJ.

continue to live there ‘at their own risk’ and will give an ‘undertaking’ to assume all liability, including to third parties. In at least nine separate judgments delivered recently we have set out the law on the subject. We begin this discussion, therefore, by noting these decisions and summarizing the principles in law that apply to such a situation. The decisions are:

- (a) *Mahendra Bhalchandra Shah & Ors v Municipal Corporation of Greater Mumbai & Ors*, Writ Petition (L) No. 1755 of 2019, decided on 24th June 2019;
- (b) *Inderjit Singh Sethi & Ors v Municipal Corporation of Greater Mumbai & Ors*, Writ Petition No. 880 of 2018, decided on 9th July 2019;
- (c) *Ramesh Nathubhai Patel & Ors v State of Maharashtra & Ors*, Writ Petition No. 1500 of 2016, decided on 9th July 2019;
- (d) *Kutbi Manzil Tenants Welfare Association v Municipal Corporation of Greater Mumbai & Ors*, Writ Petition No. 2451 of 2018, decided on 16th July 2019;
- (e) *Sundar R. Gavaskar & Ors v Municipal Corporation of Greater Mumbai & Ors*, Writ Petition No. 602 of 2019, decided on 29th July 2019;
- (f) *Richard Gasper Mathias & Ors v Municipal Commissioner, Municipal Corporation of Greater Mumbai & Ors*, Writ Petition No. 2108 of 2018 decided on 1st August 2019.
- (g) *Vivek Shantaram Kokate & Ors v Municipal Corporation of Greater Mumbai & Ors*, Writ

Petition No. 931 of 2019, decided on 19th August 2019.

(h) *Khalil Ahmed Mohd Ali Hamdulay & Ors v Municipal Corporation of Greater Mumbai & Ors*, Writ Petition (L) No. 2147 of 2019, decided on 22nd August 2019.

(i) *Pandurang Vishnu Devrukhar & Ors v State of Maharashtra & Anr*, Writ Petition No. 2687 of 2018, decided on 27th August 2019 (pertaining to Municipal tenants).

4. The principles of law culled from these decisions are these:

(a) It is never for a Court in exercise of its limited writ jurisdiction under Article 226 of the Constitution of India to decide whether a particular structure is or is not actually in a ruinous or dilapidated condition: see: *Diwanchand Gupta v NM Shah & Ors*;⁷ *Nathubhai Dhulaji v Municipal Corporation*;⁸

(b) The rights of tenants/occupants are not harmed by demolition ordered and carried out. These rights are adequately safeguarded by Section 354(5) of the MMC Act and by the provisions of the governing Maharashtra Rent Control Act 1999 which fully occupies the field regarding tenancies of built premises in Maharashtra. The Supreme Court decision in *Shaha Ratansi Khimji & Sons v Kumbhar Sons Hotel Pvt Ltd & Ors*⁹ now makes it clear that the rights of tenants and occupants are unaffected by the required demolition.

7 AIR 1972 Bom 316, per KK Desai and GN Vaidya JJ.

8 AIR 1959 Bom 332, YV Dixit & VM Tarkunde, JJ.

9 (2014) 14 SCC 1.

(c) Tenants have rights but also remedies to keep their structure in tenantable repair. We have referred extensively to Section 14 of the Maharashtra Rent Control Act, 1999. So far, we have not seen a single case where any tenant or group of tenants has invoked his or their rights under this Section.

(d) Section 353B casts an obligation not only on owners but also on occupiers of structures that are more than 30 years old to furnish a structural stability certificate. We have yet to see one so furnished unbidden, or, when demanded, one with anything meaningful in it.

(e) A Writ Court exercising jurisdiction will not substitute its own view for that of technically qualified experts. Equally, the Writ Court will not prefer the view of one expert over another.

(f) In order to succeed a Petitioner before the Court must be able to show that the impugned action suffers from *Wednesbury* unreasonableness,¹⁰ i.e., it is so unreasonable that no rational person could, having regard to the facts of the case, ever have reached it. There is no scope in such cases for any larger judicial review or invoking the doctrine of proportionality.¹¹ In other words the decision must be shown to be utterly perverse, or in excess of authority or manifestly illegal.

(g) It is never sufficient merely to allege *mala fides* without particulars. While direct evidence may not always be available as proof of *mala fides*, they

10 *Associated Provincial Picture Houses Ltd v Wednesbury Corporation*, (1948) 1 KB 223 : 1947 (2) All ER 680.

11 *State of Madhya Pradesh & Ors v Hazarilal*, (2008) 3 SCC 273; *Coimbatore District Central Cooperative Bank v Coimbatore District Cooperative Bank Employees Association & Anr*, (2007) 4 SCC 669.

must nonetheless be established. In the words of the Supreme Court, allegations of mala fides are more easily made than proved, and the very seriousness of such allegations demands proof of high order of credibility.¹² Courts are slow to draw dubious inferences from incomplete facts, especially when the imputations are grave and they are made against one who holds an office of responsibility in the administration.¹³ Mala fides are the last refuge of a losing litigant.¹⁴ Hence, whenever mala fides are alleged, we will demand proof. In case after case, we are told that the provisions of the MCGM Act are being abused by rapacious landlords in connivance with venal officers of the MCGM to order the demolition of the buildings that are otherwise structurally sound. We have yet to come across any such case. The argument is in generalities. Though it is an argument of mala fides, it is always made without any particulars whatsoever and we are asked simply to conjecture that this must be so. The law in regard to allegations of mala fides is well settled and we will draw no such general conclusion.

(h) Further, it is no answer at all, as we have held in *Mahendra Bhalchandra Shah*, to seek an order of status quo. We have discussed this aspect quite elaborately and have held that no such order can be passed by any Court without specific reference to the actual state of affairs at that moment.¹⁵ There can be

¹² *Union of India v Ashok Kumar*, (2005) 8 SCC 760; *Government of Andhra Pradesh & Ors v P Chandra Mouli & Anr*, (2009) 13 SCC 272.

¹³ *EP Royappa v State of Tamil Nadu*, (1974) 4 SCC 3; *Indian Railway Construction Co Ltd v Ajay Kumar*, (2003) 4 SCC 579.

¹⁴ *Gulam Mustafa v State of Maharashtra*, (1976) 1 SCC 800.

¹⁵ In *Kishore Kumar Khaitan & Anr v Praveen Kumar Singh*, (2006) 3 SCC 312, the Supreme Court said it was not proper to order a status quo (there, in

no order of status quo against natural elements. It is one in one thing to direct to parties to a contract to maintain the status quo. This may be an order against one person seeking another's eviction. This has no application whatsoever to a situation where the complaint is about the deterioration day by day of the physical condition of a built structure exposed to the elements.

(i) We have also demonstrated in *Mahendra Bhalchandra Shah* that the entire trend in this Court in the recent past of obtaining undertakings from occupants allowing them to continue in occupation at their own risk is without any basis in law. The MCGM cannot contract out of a statute. An undertaking by a Petitioner to a Court does not absolve the MCGM from its statutory responsibilities or liabilities under that statute. If the undertaking is intended to function as some sort of an indemnity, then we have expressed the gravest doubts about any such undertaking ever being enforceable, let alone when the person who gives the undertaking himself or herself suffers an unfortunate mishap.

15. The guidelines do not mean that the TAC has become a quasi-judicial let alone a judicial body against the findings of which writ petition after writ petition can be filed. This is to say nothing of the fact that every single assault on a TAC finding is essentially a disputed question of fact and involves a matter of technical expertise beyond the remit of a writ court. In short, writ courts are being

respect of premises) without indicating what the status quo was.

converted into first appellate courts against the reports of the TAC. That is wholly impermissible.

16. But that is unfortunately the foundation of this entire Petition. Ground after ground in the Petition is directed only to this (leaving aside the completely unnecessary and self-destructive allegations against the 4th Respondent has been politically influential, there being collusion, etc.) Prayer clause (b) really gives the game away because these tenants now claim that their demand that the structure should be repaired should be given precedence over the owners' rights to redevelop the property. That can never be.

17. The theory that a tenancy is extinguished if a building is brought down is one that in this High Court at least is being repeated not only *ad infinitum* but also *ad nauseam*. This is despite the binding decision of the Supreme Court, referred to earlier, which makes it abundantly clear (apart from the statutory provisions we have referenced above) that there is no such extinguishment of a tenancy.

18. What happens to the tenancy on redevelopment is actually a matter of operation and law and, specifically, the development planning law. If the owner/developer utilizes fungible Floor Space Index ("FSI") than the tenants get larger premises and get these on ownership basis. If no fungible FSI is being utilized, then the tenancy continues but it is of the same (and not an enlarged) square foot area. It is no more complicated than that.

19. But nothing in the entire structure of the Rent Act, the MCGM Act, the DCPR or even the TAC policy contemplates tenants being able to restrict, abrogate, abridge or confiscate the development rights and ownership rights of an owner of a property.

20. We do not know how or why the BNCMC adopted the TAC policy but it did. There are other corporations that have not adopted this policy. They are not required to do so. The order of 2014 was in respect of the MCGM alone. It could not have extended to any other municipal corporation. Had it done so, then apart from the jurisprudential impermissibility of judicial legislation, that order would have been clearly obiter and not binding. No other municipal corporation was a party before the Court in that matter either.

21. This Petition tells us in paragraph 3 the sole objective is to quash the decision of the TAC in question. That is unthinkable. This is not even an administrative order. It decides nothing. It merely reports on a factual condition and expresses an expert opinion. It cannot be assailed on merits in a writ petition. Even in judicial review of administrative action, and this branch of the law is well settled, the Court will not substitute its decision for that of the administrative authority. It will merely look to the decision-making process.

22. The TAC report considers the rival presentations, one for repairs and one for redevelopment, and it concludes that the proposal for repairs is not economically or financially viable. At page 73 we find the recommendations and contrary to the factual

assertions in the Petition the technical finding is that wooden structural members are cracked and do not have sufficient strength. The building is dilapidated. Structural distress at the ground floor is so severe that it would not be economical to repair the building. No repairs would yield proper results. The final conclusion is that the building is in a C1 category.

23. Nothing shown to us to indicate that this report suffers from any form of a failure of procedural due process. Relevant material was considered. It is not shown to us that there were any irrelevant considerations, and the financial implications of repairs can surely not be said to be irrelevant or immaterial. The tenants' contentions that the building was repairable and was in the C2-B category were also taken into account.

24. What the Petition really seeks is that in our writ jurisdiction we should arrive at a factual determination that the report of the Petitioners is to be preferred on technical and factual grounds over the report of the owner/developer. We should therefore substitute our view (with no technical expertise whatsoever) for that of the TAC, a purely technical body that does not in any sense decide rights of parties. It merely reports a factual situation and renders a technical or expert opinion.

25. There is a submission made that the owner has now appointed a developer and that the Petition should be adjourned allowing an amendment to join the developer. That joinder is wholly unnecessary, and we reject that plea. It is of no consequence to the

Petitioners, who or which entity actually carries out the development of a building. The tenancies of the Petitioners are fully protected in law. That is adequate. It is not for us in our judgments to advise the Petitioners about how those protections are afforded to them. The statutes and judgments of this Court and of the Supreme Court will speak for themselves.

26. The grounds in the Writ Petition do not carry the matter further. In fact, there is a complete muddling because there are averments that should really belong in a Civil Suit such as those in paragraphs 4.3 to 4.6 which alleged *mala fides*, political influence, corruption, collusion, etc., all questions of facts.

27. The only submission here is that the Petitioners should not be evicted 'without due process of law'. But that betrays a complete misunderstanding of what is meant by this phrase. How to get a building vacated through municipal action is a matter that is well settled and established. That is in fact the mandated procedure according to law. Nobody has suggested any other method of going about the redevelopment.

28. The most remarkable submission of all is that this is not a 'building', but is a chawl because it has wooden structural members. But the TAC has noted this. What the submission overlooks is that those very wooden structural members are in severely distressed conditions. There is also no substance whatsoever to the submission that a chawl is not the building.

29. The last point to be noted is that, as the Affidavit in Reply points out, there were already civil litigations filed. The suits filed by the Petitioners have been dismissed. This is clearly an attempt to revive civil actions in the form of a Writ Petition.

30. We see no substance in the Writ Petition. The Writ Petition is rejected.

31. At this stage, learned Advocate for the Petitioner seeks continuation of an ad interim relief. The application is rejected.

Kamal Khata, J)

(G. S. Patel, J)