

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6626 OF 2025

Avinash Raghunath Gokhale & Ors. ...Petitioners
Vs
Kalyan-Dombivali Municipal Corporation & Ors. ...Respondents

Mr. Gauresh Khandalekar, for Petitioners.
Mr. Sandeep D. Shinde, for Respondent Nos.1 to 6.
Mr. Chetan C. Agrawal, for Respondent Nos.7 to 11.

CORAM: G. S. KULKARNI &
ARIF S. DOCTOR, JJ.

DATE: 6 August 2025.

P.C.

1. Not on board taken on board on a praecipe as moved on behalf of the petitioners.
2. We have heard learned Counsel for the parties.
3. This petition under Article 226 of the Constitution of India is filed praying for the following substantive reliefs:

(a) By an appropriate writ, order or direction of this Hon'ble Court, this Hon'ble Court be pleased to quash and set aside the impugned notice dated 16.05.2025 issued by the Respondent No.3;

(b) Pending hearing of the present writ petition before this Hon'ble Court, this Hon'ble Court be pleased to stay the operation/execution of impugned notice dated 16.05.2025 issued by the Respondent No.3;

(c) By an appropriate writ, order or direction of this Hon'ble Court, this Hon'ble Court be pleased to restrain the Respondent No.1 to 6 to act upon the notice dated 16.05.2025 and may further restrain Respondent No.1 to 6 to forcefully dispossessing the petitioners and vacate the respective tenanted flats of the Petitioners in the said Ganesh Smruti Building."

4. The impugned notice dated 16 May 2025 has been issued on the basis of the decision / report of the TAC Committee which considered two conflicting reports which were structural audit reports; one furnished by the landlord and the other furnished by the tenants. From perusal of the report which is placed on record in the reply affidavit of the Municipal Corporation, it appears that the report simply makes observations on one of the reports. There are no steps taken by the TAC to assess in a manner known to law and as per the settled procedure which is required to be followed, to ascertain the condition of the building, by appointing an independent structural auditor, so as to decide on the stability of the building, considering the reports which are on the record of the TAC. However, no such independent assessment has been undertaken. There is also no discussion on the condition of the building and the petitioners were also not heard. In these circumstances, fresh assessment is required to be undertaken.

5. We are accordingly inclined to direct that the impugned notice dated 16 May 2025 which is issued on the basis of the TAC report dated 14 May 2025, cannot be acted upon. It is accordingly set aside. The proceedings stand remanded to the TAC Committee which shall now undertake a fresh assessment in accordance with law and come to an appropriate conclusion in regard to the condition of the building and the categorisation of the building which would be required to be made as per such independent assessment.

6. We clarify that this should be strictly done in accordance with law.

7. As on date, we are informed that there are total 29 tenants out of which 28

tenants have already vacated and one tenant namely petitioner No.6 has continued to occupy his tenement. He shall do so at his own risk and consequences and shall not hold the Municipal Corporation or its officers and/or any other third parties liable for any civil or criminal action, in the event of any untoward incident of collapse of the building. He shall also be liable to any third parties who are unconnected with the building or passerby in the event of any untoward incident of collapse of the building in any civil and criminal proceedings.

8. Mr. Agrawal, learned Counsel for respondent Nos.7 to 11 (landlords) has drawn our attention to an affidavit filed on behalf of his clients who states that now the landlords have approached the developer who has given an offer for redevelopment. The petitioners need to consider the said offer. They are also free to have discussions with the landlords so that the building itself can be taken up for redevelopment on the consensus which would be reached between the parties. All contentions of the parties in that regard are expressly kept open.

9. Considering the fact that the tenants have already moved out of the premises, it is in the interest of justice that an appropriate exercise of categorization of the building needs to be undertaken by the TAC and be completed as expeditiously as possible and in any event within a period of one month from today.

10. Needless to observe that the petitioners as also the landlords be heard on their respective contentions by the TAC and a decision on the structural audit, in

accordance with law, be taken. We clarify that we have not examined any other rival issues.

11. Ordered accordingly.

12. The petition is disposed of in the aforesaid terms. No costs.

(ARIF S. DOCTOR, J.)

(G. S. KULKARNI, J.)