

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION (L) NO. 8927 OF 2021**

Narendra Ratilal Shah & Ors. ... **Petitioners**

**versus**

Municipal Corporation of Greater  
Mumbai & Ors.

... **Respondents**

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Mr.Prathmesh Kamat i/b. Ms.Sapna Rachure, Advocate for the  
Petitioners.

Ms.Vandana Mahadik, Advocate for the Respondents No.1 to  
4/MCGM.

Mr.Nitin Tacker a/w. Mr.P.G.Lad, AGP for the Respondent  
No.5/State.

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**CORAM :- DIPANKAR DATTA, CJ &  
G. S. KULKARNI, J.**

**DATE : - APRIL 8, 2021**

**ORAL JUDGMENT :-** (Per Dipankar Datta, CJ.)

1. This writ petition is at the instance of 5 (five) residents/occupiers of "Rubby Terrace" situate on M.V. Road, Andheri (East), Mumbai - 400 069 (hereafter the said building). We find that the petitioners 1 to 4 have already instituted a writ petition, registered as WP(L) 6268 of 2021 along with several other residents/occupiers of the said building seeking more or less similar relief as claimed in this writ petition. We are of the view that this writ petition, at the instance of the petitioners 1 to 4, ought not to be entertained particularly having regard to the pendency of Writ Petition (L)

No. 6268 of 2021. Accordingly, at their instance, this writ petition stands dismissed. This order of dismissal shall not affect such petitioners' right to raise all contentions that are available to them in such pending writ petition.

2. However, the petitioner no. 5 is not a party to Writ Petition (L) No. 6268 of 2021; hence, this writ petition shall be heard at his instance only.

3. The challenge in this writ petition is to a report of the Technical Advisory Committee (hereafter "the TAC", for short) of the Municipal Corporation of Greater Mumbai (hereafter "the MCGM", for short) dated January 22, 2021 as well as to a notice dated February 1, 2021 issued under Section 354 of the Mumbai Municipal Corporation Act, 1888 (hereafter "the Act", for short). The TAC by its impugned report categorized the said building as "C-1". Incidentally, it is not disputed at the Bar that the said building is more than 60 years old. The said building has been so categorized by the TAC on account of the same having become unsafe and dangerous and requiring immediate demolition for securing public safety. Pursuant to such report, the impugned notice was issued requiring the occupants/residents of the said building to vacate the same for the purpose of facilitating its demolition.

4. Appearing in support of the writ petition, Mr. Prathmesh Kamat, learned advocate has raised the following points:

(i) The report of the structural engineer appointed by

the tenants, categorizing the said building as "C-2B", was not considered in its entirety inasmuch as despite there being findings rendered by such structural engineer in respect of 'core test', 'chemical analysis' and 'cement aggregate ratio', the TAC concluded in its report that the same were "not found". Accordingly, it is clear that the TAC did not apply its mind to all the materials on record.

- (ii) The report of the structural engineer appointed by the tenants does indicate that the subject building is capable of being repaired and though such repairs would enhance the life of the structure by a minimum period of two years with periodical repairs being carried out at an interval of two years, the TAC without assigning any independent reason accepted the report of the structural engineer appointed by the landlord/respondent no.5. The minimum that was required of the TAC was to give some indication as to why the report of the structural engineer appointed by the respondent no.5 appeared to it to be more creditworthy in preference to the report of the structural engineer appointed by the tenants; and the final report of the TAC being unreasoned, the same does not comply with the requirements of due process, fair play in action and natural justice.
- (iii) The TAC did not conduct any of the tests as set out in sub-clause 2 of clause (d) of paragraph 9 of the decision of the coordinate Bench of this Court in

**Municipal Corporation of Greater Mumbai V/s. State of Maharashtra**, reported in (2014) 6 Bom. C.R. 860. Reliance has also been placed on the decision of another coordinate Bench of this Court in **Nalin Kumar Ramdas Sampat V/s. Mumbai Municipal Corporation**, reported in 2018 SCC OnLine Bom 6374, for the proposition that the TAC having acted completely contrary to the decision in **Municipal Corporation of Greater Mumbai** (supra), the TAC ought to be directed to submit a fresh report in the light of the observations made in such decision. Prayer is made for direction of a similar nature requiring identical course of action to be followed in the present case.

- (iv) Paragraph 2.09 of the guidelines (hereafter "the said guidelines", for short) issued by the MCGM for declaring private and municipal buildings as "C-1" category (dangerous, unsafe) stipulate that the tenants are entitled for alternate accommodation; hence, even if the said building is demolished on account of the same having become unsafe/dangerous, the respondent no.5 ought to be directed to provide alternate accommodation in terms of the said guidelines.

5. Having heard Mr. Kamat and considering the grievances raised in this writ petition, we do not find any infraction of the right of the surviving petitioner warranting interference and are of the firm opinion, for the reasons to be assigned

hereafter, that the writ petition deserves to be dismissed *in limine*.

6. Although Mr. Kamat is right in his contention that the TAC while comparing the conclusions arrived at by the two sets of structural engineers appointed by the respondent no.5 and the tenants has indicated that the structural audit report of the structural engineer appointed by the tenants was lacking in certain material particulars, of the nature brought to our notice, nothing substantial turns on such an omission. The said guidelines, framed by the MCGM in pursuance of the interim decision in **Municipal Corporation of Greater Mumbai** (supra) and the final order dated February 28, 2018, require that if conflicting structural audit reports are produced by the owners and/or the occupants on the status of the building under consideration, the matter shall be referred to the TAC and its decision shall be final and binding on all parties concerned. The TAC is under obligation to give hearing to the concerned structural consultants during the meeting.

7. In the present case, it is clear from the report of the TAC that the structural engineer appointed by the tenants was present at the meeting and he was duly consulted. No dispute on this score has been raised by the surviving petitioner. The report of such structural engineer, prepared in November 2019, is further clear on the point that the said building is damaged and that if repairs do not begin in three months, such engineer would not stand responsible and the MCGM will be informed accordingly. Not only that, there are two letters

on record : (i) an undated letter addressed by the tenants to the respondent no.5 and (ii) a letter dated January 13, 2021 addressed by the tenants to the Assistant Deputy Commissioner, K/East, Andheri (E), Mumbai - 400 069, wherein it has been admitted that the said building is in a dilapidated condition and for the purpose of safety and security of the lives of the tenants, the same requires immediate repairs.

8. Perusal of the report of the TAC reveals that its members had been to the site of the said building and its independent observations are noted in Sl. Nos. 1 to 13 of paragraph 8 thereof. Such observations do provide ground for the TAC to reach the conclusion it did. It is certainly not a case where the TAC, without any site inspection and without the requisite satisfaction, arrived at a conclusion that the said building is unsafe and dangerous and, thus, requires to be demolished. There has been appropriate ascertainment of the condition of the said building by conducting requisite inspection at the site and the findings are not merely based on mechanical acceptance of the report of the structural engineer appointed by the respondent no.5. Had the independent observations under paragraph 8 not been there, the surviving petitioner could have something to say. In such view of the matter, we find no reason to hold that the TAC had mechanically proceeded to discard the structural audit report of the structural engineer appointed by the tenants.

9. As observed earlier, we find that the said guidelines were

framed taking into consideration the directions given in **Municipal Corporation of Greater Mumbai** (supra). Once directions given by the Court have been encapsulated in the said guidelines, our duty is to examine whether such guidelines have been followed by the TAC in letter and spirit. We see no reason to take exception to the report of the TAC on this count since no infirmity in the process of decision making has been brought to our notice by Mr. Kamat. If indeed, the directions given by this Court in **Municipal Corporation of Greater Mumbai** (supra) had not been followed and the said guidelines framed without taking into consideration any aspect, which the MCGM was required to follow, it was incumbent that a substantive challenge to the said guidelines were laid. Without there being any challenge to the said guidelines, the point sought to be raised by Mr. Kamath that the directions given by the coordinate Bench in **Municipal Corporation of Greater Mumbai** (supra) have not been followed appears to us to be devoid of any substance.

10. The decision in **Nalin Kumar Ramdas Sampat** (supra) was rendered on March 19, 2018 i.e., a few months before the said guidelines were framed. The coordinate Bench interfered because the directions given by the earlier coordinate Bench in **Municipal Corporation of Greater Mumbai** (supra) had not been followed by the TAC. Once the guidelines are in place, the action taken by the TAC has to be judged in the light of the provisions contained therein. Mr. Kamat has not been able to establish before us that the report of the TAC has

acted in derogation/deviation of the said guidelines.

11. The final contention of Mr. Kamat that alternate accommodation ought to be provided has been raised to be rejected. We have seen from the said guidelines that alternate accommodation is required to be provided if in case any building owned by the MCGM is categorized as "C-1". The said building is a private building, owned by the respondent no.5. Hence, the question of alternate accommodation does not and cannot arise.

12. Proceedings before a writ court are not in the nature of an appeal. There cannot be or reevaluation or reappraisal of factual findings rendered by an authority competent to record the same. If an order passed by such authority suffers from the vice of illegality, irrationality and/or procedural impropriety, which are the known grounds of judicial review, a writ court may interfere if such interference would further public interest. Here, the TAC comprising of expert members/engineers has returned a finding that the said building is unsafe and dangerous and needs to be vacated immediately. The field reserved for experts (engineers, here) should not be encroached upon by the judiciary, is settled law. We lack the necessary expertise and cannot sit in appeal and reverse finding of the TAC.

13. For the reasons aforesaid, the writ petition is dismissed *in limine*, without any order for costs.



14. The surviving petitioner is granted fifteen days' time to vacate, failing which the respondent no.5 shall be at liberty to take appropriate steps in accordance with law.

**(G. S. KULKARNI, J.)**

**(CHIEF JUSTICE)**