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Mr.Ashish Kamath, a/w. Mr.C.Rashmikant, Mr.Vishesh Malviya, Mr.Mohit Khanna, Mr.Tejas Popat, i/b. M/s.Rashmikant & Partners for the Respondent no. 4 in WPL/12803/2022 and Respondent no.5 in WPL/13705/2022.

Mr.Roshan Bhoir, Assistant Engineer (Building Proposal) 'C' Ward present.

**CORAM: R. D. DHANUKA AND
KAMAL KHATA, JJ.**

DATE : 11th AUGUST, 2022

JUDGMENT (Per R.D.Dhanuka, J.):-

The petitioners in Writ Petition (L) No. 13705 of 2022 filed under Article 226 of the Constitution of India, have prayed for a writ of certiorari for quashing and setting aside letter dated 4th April, 2022 issued by the respondent no.4 Designated Officer and Executive Engineer under section 354 of the Mumbai Municipal Corporation Act read with section 489 of the said Act to the trust/owner/landlord of the Building No. 225, C.S.No.2179 of Bhuleshwar Division, Junction of J.S.S. Road & B.J.Marg, Thakurdwar, Mumbai – 400 002 calling upon them to vacate and pull down the structure/building. The said letter also called upon the petitioners to prevent all cause of danger therefrom with a threat of prosecution under section 475-A of the said Act in case of non compliance of the said notice within 30 days from the date of service of the said notice and stating that the said building is in a

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dangerous condition, likely to fall or in any way dangerous to any person occupying, resorting to, or passing by such structure or any other structure or place in the neighbourhood thereof.

2. The petitioners also prayed for a writ of certiorari for quashing and setting aside the decision of the respondent nos. 1 to 4 to declare the said building in C-1 category and minutes of the meeting held on 14th October, 2021 of the Technical Advisory Committee.

3. The petitioner in Writ Petition (L) No. 12803 of 2022 has prayed for quashing and setting aside the notice dated 4th April, 2022 and seeks permission to inspect the first floor and take further action as required as per the report of the Structural Engineer dated 15th July, 2021.

4. By consent of parties, both the writ petitions were heard together and are being disposed off by a common order :-

5. We shall first summarize the facts in Writ Petition (L) No. 13705 of 2022 :-

6. The respondent no.5 is the landlord/owner of the building known

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as H.N.Petit Widows Home, Building No. 225, JSS Road, Thakurdwar, Mumbai – 400 002 (hereinafter referred to as the said building.) The building has ground plus five floors and is more than 100 years old. It is the case of the respondent no.5 that the said building was used for providing hostel facilities to widows. The petitioners in this petition are claiming to be the tenants in the said building. Sometime in the year 2014, the backside of the building was repaired according to the petitioners.

7. It is the case of the respondent no.5 that due to the dilapidated condition of the said building, the widows who were occupying the tenements on the five upper floors, were moved to another hostel of the respondent no.5.

8. The respondent no.5 forwarded a copy of the Structural Audit Report prepared by a licensed structural consultant Mr.Ramkrishan Kejriwal to the respondent no.4. As per the said report, the said building is severely damaged, is in a dilapidated condition and classified under C-1 category.

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9. The respondent no.3 vide letter dated 10th May, 2021, called upon the respondent no.5 to submit documentary evidence and the names of the occupiers/tenants within three days from the receipt of the said letter and directed to take necessary preventive measures such as propping, barricading, etc. to prevent any untoward incident.

10. On 28th May, 2021, the respondent no.4 called upon the petitioners stating that the respondent no.4 was in receipt of the structural audit report of the said building and called upon them to submit their structural audit report through a licensed structural consultant within 30 days and/or submit their say in the event they had any objections to the structural audit report submitted by the respondent no.5 through Mr.Ramkrishan Kejriwal in accordance with clause 1.04 of the guidelines issued by the Deputy Municipal Commissioner dated 25th May, 2018.

11. On 18th June, 2021, the petitioners informed the respondent no.4 that the tenants would like to get a structural audit of the building done. It is the case of the respondent no.5 that the said letter has not been signed by Mr.Ramesh Jain and Mr.Praveen Jain. The signature of

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Mr.Saroj Kumar Pandey does not match the signature in the writ petition.

12. On 2nd July, 2021, the petitioners appointed Mr.Bhalchandra Oak as the structural auditor. On 15th July, 2021, the petitioners submitted a structural audit report prepared by Mr.Bhalchandra Oak to the respondent no.4.

13. On 11th August, 2021, the respondent no.5 addressed a letter to the petitioners inviting their attention to the letter dated 5th July, 2021 from the respondent no.1 directing them to take preventive measures such as propping, barricading etc. The petitioners were informed that the respondent no.5 had appointed M/s.Lakdawala Logistics for carrying out the said work as instructed by the respondent no.1.

14. On 24th August, 2021, the respondent no.1 informed the parties that the Deputy Chief Engineer (BP) City, Chairman, Technical Advisory Committee wishes to inspect the building along with Technical Advisory Committee and concerned C Ward members on 26th August, 2021.

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15. On 12th September, 2021, the said Mr.Bhalchandra Oak issued a corrigendum to report dated 15th July, 2021 and opined that ‘the building structure was classified as C-3, Minor Repairs only’.

16. On 22nd September, 2021, the petitioners filed a suit bearing LC Suit No. 7793 of 2021 along with Notice of Motion No. 230 of 2021 in the City Civil Court, Bombay for various reliefs including permanent order of injunction restraining the Corporation from enforcing the notice dated 5th July, 2021. On 6th October, 2021, the City Civil Court, Bombay refused to grant any *ad-interim* relief holding that till then, no notice under section 354 of the said Act has been passed and the building was not classified as C-1 by the Corporation.

17. On 14th October, 2021, the Technical Advisory Committee held a meeting and after comparing both the structural audit reports and hearing the structural auditors came to the conclusion that the structure of the building was in a dilapidated condition and may collapse thereby endangering life and property of residents and passersby and opined that the structure under reference needs to be vacated and demolished

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immediately. The Technical Advisory Committee declared the said structure falls in C-1 category.

18. On 1st December, 2021, the Technical Advisory Committee passed an order directing the respondent no.5 to take necessary and preventive measures such as propping of the building to avoid any mishap.

19. On 22nd December, 2021, the respondent no.1 Corporation addressed a letter to the respondent no.5 stating that the structure has been categorized as C-1 structure by the Technical Advisory Committee on 1st December, 2021 and required the respondent no.5 to submit the names of the occupiers and evidence of their occupation within three days. The respondent no.1 once again directed the respondent no.5 to take preventive action.

20. On 5th January, 2022, the respondent no.5 addressed a letter to the respondent no.1 and pointed out that the building was more than 100 years old though there was no approval plan of the building. The respondent no.5 contended that the trust had intended to take

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preventive steps but the tenants have objected to the respondent no.5 from taking such preventive steps. On 18th February, 2022, the respondent no.5 addressed a letter to the petitioners informing that the respondent no.5 had appointed a contractor to arrange for propping and barricading which the petitioners did not permit the respondent no.5 to do.

21. On 24th February, 2022, the petitioners informed the respondent no.5 that the contention of the respondent no.5 that the building was dilapidated/dangerous is baseless and is yet to be adjudged upon by the Technical Advisory Committee. The respondent no.5 had failed in its duties to upkeep and repair the building due to which damage was caused to the building. The petitioners objected to barricading and propping up the building and informed that the petitioners themselves would undertake necessary repairs as advised in the structural audit report of their auditor.

22. On 14th March, 2022, the respondent no.4 issued notice under section 488 of the said Act to the tenants/ occupiers stating that the Designated Officer with assistants will enter the premises situated in

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the building for the area measurements of shops and rooms as per the policy guidelines of dangerous/dilapidated structure on 15th March, 2022.

23. On 29th March, 2022, the Designated Officer addressed a letter to the petitioners and the respondent no.5 including a copy of the order dated 1st December, 2021 passed by the Technical Advisory Committee and directed the parties to act as per circular dated 25th May, 2018 and to take necessary preventive measures in order to avoid any mishap in the meantime. On 31st March, 2022, the respondent no.4 issued an area statement to the parties showing the measurement of the premises taken during the site visit on 15th March, 2022.

24. On 4th April, 2022, the Designated Officer addressed a letter to the parties under section 354 of the Mumbai Municipal Corporation Act to vacate and pull down the building within 30 days along with a threat of initiation of action against them in case of non compliance under section 475-A of the said Act.

25. On 11th April, 2022, the respondent no.5 called upon the

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petitioners to vacate the building within 15 days as the building was required to be pulled down.

26. It is the case of the respondent no.5 that since the condition of the building was dilapidated, in the year 2019 itself, the widows were moved to another hostel of the respondent no.5 and since then the tenement on the upper floors i.e. first to five floors are lying vacant.

27. The petitioner in Writ Petition (L) No. 12803 of 2022 claims to be in occupation of shop bearing no. 302 on the ground floor of the said building carrying on business for more than 70 years. It is also the case of the petitioner in the said petition that the petitioner has been paying the rent in respect of the said shop premises from time to time to the respondent no.5.

28. Mr.Tamboly and Mr.Daver, learned counsel for the petitioners in Writ Petition (L) No. 13705 of 2022 invited our attention to various exhibits annexed to the writ petition and various averments from the reply filed by the respondents.

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29. It is submitted that the Technical Advisory Committee as well as the respondent nos. 1 to 4 have not adhered to the guidelines laid down by this Court by an order dated 23rd June, 2014 in Writ Petition (L) No. 1135 of 2014. It is submitted that the Technical Advisory Committee had perused and considered only the structural audit report and carried out visual observations and surprisingly came to the conclusion that the said building was in dangerous and dilapidated condition, may collapse and therefore needs to be vacated and demolished immediately.

30. It is submitted that the Technical Advisory Committee has not carried out specific test like ultra sonic pulse velocity test, rebound hammer test, half cell potential test, carbonation depth test, core test, chemical analysis, cement aggregate ratio. On this ground alone, the impugned order passed by the Technical Advisory Committee and action initiated by the respondent nos. 1 to 4 is vitiated. It is submitted that the Technical Advisory Committee could not have come to such conclusion without carrying out any such test which were mandatory.

31. Learned counsel for the petitioners invited our attention to the letter addressed by the Municipal Corporation calling upon the

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petitioners to submit the structural audit report through licensed structural consultant of the building along with Proforma B based on non destructive testing (NDT) which includes above seven tests. It is submitted that the said letter dated 28th May, 2021 itself would indicate the mandatory requirement of carrying out various tests and obtain test reports along with the structural audit report required to be submitted by the petitioners.

32. It is submitted that admittedly the respondent no.5 did not carry out any test in accordance with the mandatory requirement provided in the guidelines and also Proforma B. No such test reports were submitted along with the structural audit report submitted by the respondent no.5. Learned counsel invited our attention to the structural audit report submitted by Mr.Bhalchandra Oak appointed by the petitioners submitted that the said report would clearly initiate the nature of the test carried out by the petitioners before submission of the said structural audit report. Our attention is also invited to the corrigendum issued by the said structural auditor stating that the building was in C-1 category and requires only repairs to be carried out.

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33. Learned counsel for the petitioners invited our attention to the order passed by the Technical Advisory Committee in the meeting held on 14th October, 2021 and more particularly the comparison of the audit report submitted by the parties at page 207 of the petition. It is submitted that admittedly, the petitioners had carried out about 3 out of 10 tests and had submitted a test report along with structural audit report submitted by the petitioners. Though the respondent no.5 had not carried out any of the mandatory test, the Technical Advisory Committee in the impugned report has only opined that these tests were not required as the building was having load bearing wall and TW/M.S. structure and declared the said structure under C-1 category.

34. It is submitted by the learned counsel for the petitioners that the structural audit report submitted by the petitioners through their consultant has been totally ignored. No reasons are recorded by the Technical Advisory Committee as to why the structural audit report submitted by the petitioners' structural consultant was not considered or was not acceptable as against the structural audit report submitted by the respondent no.5 through their consultant were acceptable.

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35. Learned counsel for the petitioners placed reliance on the judgment of Supreme Court in case of ***Union of India vs. Mohan Lal Capoor and others, (1973) 2 SCC 836*** and submitted that whether administrative quasi judicial order should reveal rational nexus between the facts considered and the conclusions reached to show that the decision was manifestly just and reasonable. It is submitted that the reasons are the links between the materials on which certain conclusions are based and the actual conclusions. Learned counsel submits that the entire order passed by the Technical Advisory Committee is without reasons. It is submitted that while accepting the structural audit report submitted by the consultants of the respondent no.5 and dismissing the report submitted by the petitioners, the Technical Advisory Committee has violated the principles laid down by the Supreme Court in case of ***Union of India*** (supra) and consequently the impugned order is vitiated and deserves to be set aside on that ground alone.

36. Learned counsel for the petitioners placed reliance on the judgment delivered by this Court on 12th December, 2017 in Writ

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Petition No. 211 of 2017 in case of ***Ansari Rizwan Ahmed Mohd. Umer and Ors. vs. Municipal Corporation of Greater Mumbai and Others*** and more particularly paragraph (4) and submits that the tests were required to be conducted before submitting audit report. It is submitted that this Court in the said judgment directed the Municipal Corporation to refer the case of the subject building to Technical Advisory Committee with a direction to comply with the directions issued by this Court in case of ***Municipal Corporation of Greater Mumbai vs. State of Maharashtra & Ors. (2014) SCC Online Bom. 666***. It is submitted that the respondent no.5 not having carried out any mandatory test, the Technical Advisory Committee could not have accepted the structural audit report submitted by the structural consultant of the respondent no.5.

37. Learned counsel for the petitioners placed reliance on the circular dated 1st January, 2018 issued by the Municipal Corporation of Greater Mumbai formulating certain guidelines since there were no specific guidelines for appointment of structural consultant. He submits that those guidelines were also not complied with by the respondent nos. 1 to 4 or by the respondent no.5.

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38. Learned counsel placed reliance on the judgment delivered by a learned Single Judge of this Court in case of **Jaspal A.Wig & Ors. vs. Municipal Corporation of Greater Mumbai & Ors., 2018 SCC Online Bom 16302** and in particular paragraphs 7, 8 and 10 in support of the submission that in all such cases, where the visual inspection is not carried out, the report of the Technical Advisory Committee should be ignored or it would become illegal. Everything depends upon the facts and circumstances of each case.

39. In paragraph (8) of the said judgment, it is held that it being a load bearing structure, if the N.D. tests are not carried out and there is proper explanation given by the Technical Advisory Committee for the same, it cannot be said that the Technical Advisory Committee has not followed the requisite procedure and therefore, the conclusion arrived at by the Technical Advisory Committee should be ignored.

40. It is submitted by the learned counsel for the petitioners that there is no differential settlement in the impugned structure. The Technical Advisory Committee ought to have directed the respondent

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no.5 to carry out all the tests before arriving at the conclusion of that the building was classified in C-1 category. It is lastly submitted by the learned counsel for the petitioners that the ground floor structures occupied by the petitioners are in sound condition and are not required to be demolished. The petitioners have no objection if the upper floors are demolished by the Municipal Corporation or by the respondent no.5.

41. It is submitted by the learned counsel for the petitioners that the facts of this case are very peculiar, where respondent no.5 has not even come with any proposal for redevelopment of the building nor with the proposal to shift the petitioners to any other alternate accommodation till the building is redeveloped.

42. Mr.Ashish Kamath, learned counsel for the respondent no.4 in Writ Petition (L) No. 12803 of 2022 and respondent no.5 in Writ Petition (L) No. 13705 of 2022 submits that the order passed by the Technical Advisory Committee on 1st December, 2021 does not show any malafide or perversity. It is submitted that the said building is about 120 years old. He invited our attention to the structural audit

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report submitted by the structural engineer of the petitioners Mr. Bhalchandra Oak and submitted that the said structural auditor has erroneously considered the age of the construction of the said building as approximately 60 years, though it is an admitted position that the said building is about 120 years old or at least about 100 years old. He submits that the entire report submitted by the structural auditor of the petitioners is on a wrong factual premise and is thus rightly ignored by the Technical Advisory Committee. He considered that at the first instance, the said consultant of the petitioners in the said report submitted on 15th July, 2021 has classified the said building in C-2B category. However, surprisingly by a corrigendum issued on 12th September, 2021 by the said structural engineer, the classification of the said building was classified as C-3 that required minor repairs only by correcting the alleged mistake on the second page of the forwarding letter.

43. Learned counsel invited our attention to the said report submitted by the structural engineer of the petitioners and submitted that even according to the said report which was issued on the premise that the building was 60 years old. He submits that the said consultant appears

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to have submitted the said report on the basis of only ground floor structure and has accordingly erroneously opined that all the load of the upper floors are eventually transferred to the foundations through the ground floor. The said consultant came to a conclusion that the life of the building would be 15 years after repairs. He submits that on this ground itself the said structural audit report submitted by the said Mr.Bhalchandra Oak even otherwise could not have been considered as authentic and reliable by the Technical Advisory Committee.

44. It is submitted that the entire report is based on the instructions given by the petitioners. The said structural auditor had not admittedly visited the upper floors of the said building before submitting the said structural audit report.

45. Learned counsel for the respondent no.5 invited our attention to the structural audit report submitted by Mr.Ramkrishan Kejriwal, annexed at Ex.DD of the petition. The west side wall is in dangerous condition and required all the lintels and internal and external plaster also to be redone. The additional columns and beams had to be provided to relieve the loading on wall and also give the bearing to

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joist of the flooring. He submits that this crucial aspect which was noticed by the structural auditor of the respondent no.5 was unfortunately not noticed by the structural auditor appointed by the petitioners while submitting the report while perusal of the Technical Advisory Committee.

46. It is submitted by the learned counsel for the respondent no.5 that the structural auditor appointed by the petitioners also did not consider another crucial aspect that the structural columns and beams of the ground floor are badly damaged/corroded in such a way that columns and beams may deflect, which may cause collapse of the building and necessitated a pull down of the entire building so as to save the lives of occupants and passersby. The consultant of the petitioners also did not consider that the repairs in the building were uneconomical and building was dangerous for human habitation.

47. Insofar as the letter addressed by the Municipal Corporation calling upon the petitioners to carry out various tests as per Proforma B before submitting structural audit report is concerned, it is submitted by the learned counsel for the respondent no.5 that the said requirement of

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carrying out the test as per Proforma B does not apply in the case of the load bearing structure. In support of this submission, learned counsel invited our attention to the report of the structural auditor appointed by the petitioners and submitted that it is an admitted position that the core support structure is load bearing. The petitioners also during the course of arguments, did not dispute that the impugned structure was load bearing.

48. It is submitted that the opinion of the structural auditor appointed by the petitioners that the NDT tests could have been required in case of structure being load bearing was totally unauthentic on the ground that the building was not more than 60 years but rather was more than 100 years old. He submitted that the entire conclusion in the said report of Mr.Bhalchandra Oak was totally unauthentic and he could not opine correctly in view of the erroneous premise that the building was only 60 years old and not 100 years old.

49. Insofar as letter addressed by the Municipal Corporation calling upon the petitioners to carry out various tests in accordance with Proforma B is concerned, it is submitted by the learned counsel for the

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respondent no.5 that the petitioners have also not carried out all the requisite tests as prescribed in Proforma B. They have carried out only selective tests and there are no reasons given by the structural consultant for not carrying out all tests. On this ground also, report of the structural auditor submitted by the petitioners could not have been considered as authentic by the Technical Advisory Committee.

50. Learned counsel for the respondent no.5 submitted that substantial portion of the land beneath of the impugned structure is affected by the setback area and on this ground also the proposal of the redevelopment may not be void.

51. Learned counsel for the respondent no.5 invited our attention to the reasons recorded by the Technical Advisory Committee in the impugned report and submitted that the Technical Advisory Committee has not only considered the report submitted by both the parties but had also visited the site on 29th August, 2021 and observed that the building was repaired in past by erecting steel beams and columns to support the structure. Heavy vegetation was seen on external walls and top of the building. Major vertical cracks are seen on the North West face of the

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building from 2nd to 4th floor leakage marks, deflected and damaged lintel above window sill and deterioration of wooden beams in slab were seen in some of the rooms on 1st to 3rd floor.

52. It is submitted that the Technical Advisory Committee has also raised various queries during the meeting and had asked for the views of the structural consultant appointed by both the parties who were present in the meeting. The structural auditor appointed by the petitioners himself was present in the meeting and admitted that the building was load bearing structure with wall thickness of 350 mm equivalent about 14 inches.

53. In 2nd page of the said report at page 209 of the petition, when the Technical Advisory Committee asked the structural consultant of the petitioners whether the crack was due to differential settlement or otherwise, the structural auditor of the petitioners opined that the crack in the wall was from 2nd floor onward and hence it was not due to differential settlement. Mr.Chaugule, the representative of the consultant appointed by the respondent no.5 pointed out to the consultant of the petitioners that the cracks were not superficial and

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were major cracks in load bearing walls. He submits that after considering and deliberating on both the reports, the Technical Advisory Committee rightly opined that the building was in dangerous and dilapidated condition and may collapse thereby endangering life and property of the residents and passersby and needs to be vacated and demolished immediately and classification of the said building as C-1 category is correct.

54. It is submitted by the learned counsel for the respondent no.5 that the entire arguments of the learned counsel for the petitioners is that since no NDT and other tests were carried out by the respondent no.5, the structural audit report submitted by the respondent no.5 could not have been considered at all by the Technical Advisory Committee. He submits that since the entire structure was a load bearing structure and the dilapidated condition of the building was visible to the naked eye, that was noticed during the site visit by the Technical Advisory Committee, there was no necessity to carry out any such test. The Proforma B relied upon by the Municipal Corporation is not applicable in case of the structural being a load bearing structure.

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55. Learned counsel for the respondent no.5 placed reliance on the judgment of the Division Bench of this Court in case of ***Bharat Choksey & Ors. vs. Life Insurance Corporation of India & Ors., 2015 SCC OnLine Bom 6077*** and more particularly paragraph (24) of the judgment delivered by the learned Single Judge of this Court in case of ***Anil Agrawal vs. The Municipal Corporation of Greater Mumbai & Ors.***, delivered on 25th September, 2019 in ***Appeal from Order (St) No. 25086 of 2019*** and more particular paragraphs 4 and 5.

56. Learned counsel for the respondent nos. 4 and 5 distinguished the judgment of this Court in case of ***Jaspal A.Wig & Ors.*** (supra) relied upon by the learned counsel for the petitioners and submitted that in the facts of this case, the Technical Advisory Committee had clearly opined that it being a load bearing structure, the test was not required. The order passed by the Technical Advisory Committee thus could not have been interfered with. He relied upon paragraph (10) of the said judgment and submitted that everything depends upon the facts and circumstances of each case. The Technical Advisory Committee has not only considered the report submitted by both the structural audit engineers but has also visited the site before passing the

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impugned order.

57. Insofar as circular dated 1st January, 2018 relied upon by the learned counsel for the petitioners is concerned, it is submitted by the learned counsel for the respondent no.5 that the said circular dated 1st January, 2018 was issued by the Municipal Corporation before framing specific guidelines for appointment of structural consultant and for referring the contract in a report submitted if any by the Technical Advisory Committee. He submitted that the said circular thus would not apply to the facts of this case and more so in view of the specific guidelines already framed by the Municipal Corporation subsequently.

58. The next submission of the learned counsel for the respondent no.5 is that the opinion formed by the Technical Advisory Committee is not vitiated by any malafides, perversity, arbitrariness, hence this Court has no power to interfere with such order passed by the competent body while exercising powers under Article 226 of the Constitution of India. He submits that this Court is not an expert to interfere with the technical opinion of the Technical Advisory Committee on various technical aspects. In support of this, learned

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counsel for the respondent no.5 placed reliance on the following judgments :-

(a) Judgment of Division Bench of this Court in case of ***Mahendra Bhalchandra Shah & Ors. vs. Municipal Corporation of Greater Bombay & Ors.*** in ***Writ Petition (L) No. 1755 of 2019*** delivered on 24th June, 2019 and more particularly paragraphs 17, 19, 21 to 26, 31 to 33 and 35.

(b) Judgment of Division Bench of this Court in case of ***Vivek Shantaram Kokate & Ors. vs. The Municipal Corporation of Greater Mumbai & Ors.*** in ***Writ Petition No. 931 of 2019*** delivered on 19th August, 2019.

(c) Judgment of Division Bench of this Court in case of ***Municipal Corporation of Greater Mumbai vs. The State of Maharashtra & Ors.*** in ***Writ Petition No. 1080 of 2015***

delivered on 28th February, 2018 and more particularly paragraph 28.

59. Learned counsel for the respondent no.5 also placed reliance on the judgment of this Court in case of ***Jayant Sunderdas Karia & Ors. vs. Municipal Corporation of Greater Bombay & Ors., 2017 (6) Mh.L.J. 657*** and more particularly paragraph (6) in support of the submission that the suggestion of the learned counsel for the petitioners that all upper floors can be demolished so as to protect the ground floor structure would not be possible or viable on the ground that the entire building is found dilapidated and is required to be demolished.

60. It is submitted by the learned counsel for the respondent no.5 that the petitioners had admittedly filed a suit bearing L.C.Suit No. 7993 of 2021 before the Bombay City Civil Court challenging the said notice dated 5th July, 2021. He invited our attention to the order dated 6th October, 2021 passed by the Bombay City Civil Court refusing to grant ad-interim relief. He submitted that in view thereof, no reliefs can be granted by this Court in this writ petition.

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61. Insofar as Writ Petition (L) No.12803 of 2022 is concerned, it is submitted by the learned counsel for the respondent no.5 that the petitioners therein claims to be one of the sub-tenant of the respondent no.5 in the said building which claim is seriously disputed by the respondent no.5. The petitioners have not submitted any structural audit report separately in respect of the said building and thus cannot be now allowed to challenge the order passed by the Technical Advisory Committee on any ground.

62. In view of the submissions made by the learned counsel for the respondent no.5 that the substantial part of the building is affected by set back area, this Court passed an order on 12th July, 2022 recording such submission made by the learned counsel for the respondent no.5 that according to the respondent no.5 it would not be viable to carry out any redevelopment without prejudice to the rights and contentions of the respondent no.5 that no relief can be granted by this Court in favour of the petitioners, this Court accordingly directed to take instructions and to make a statement before this Court as to whether the land beneath the offending structure is affected by set back and if so, how much area and whether any reconstruction is permissible on the said

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land if the offending structures are directed to be demolished.

63. In pursuance of the said order issued by this Court on 12th July, 2022, the Municipal Corporation filed two affidavits.

64. Mr. Kamath, learned counsel for the respondent no.5 tenders a copy of the notice issued by the Municipal Corporation on 12th July, 2022 and served upon the owners/occupiers stating that the condition of the building is absolutely deteriorated and/or may collapse any moment. The Municipal Corporation made it clear by the said notice that, if there is any loss of life or any other loss, the Municipal Corporation will not be responsible for such untoward incident.

65. Ms. Dhond, learned counsel for the Municipal Corporation invited our attention to the various averments made by the Municipal Corporation in various affidavits filed in these petitions. It is submitted by the learned counsel that the subject plot is situated in the residential zone and no reservation is affecting the land. The subject plot falls within the Coastal Regulation Zone as shown in the location plan and thus shall be governed by the notification issued by the Government of

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India dated 19th February, 1991 and amended upto date. He submits that as per sanctioned CZMP, HTL/set back lines with map scale with respect to subject plot i.e. the land under reference falls under CRZ II category. The development shall be governed as per the Ministry of Environment and Forest, Government of India in the notification dated 19th February, 1991.

66. It is submitted that the subject plot abuts the proposed Metro Rail alignment and/or falls within influence zone of station areas thereof. Remarks from MMRDA shall be obtained before commencing any development. She submits that the said plan is affected by the sanctioned regular line of 29.26 mtrs. i.e. 90.6 feet approximately wide Jagannath Shankarseth Road marked in red colour on the regular line plan. She invited our attention to the development plan annexed to the affidavit in reply dated 21st July, 2021.

67. Learned counsel for the Corporation also invited our attention to various averments made in the affidavit in reply dated 21st July, 2022 filed by the Assistant Engineer (Building Proposal) on behalf of the respondent nos. 1 to 3 and would submit that if any online proposal is

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submitted for extensive repairs (beyond 75% of built up area) to any existing building which have been constructed with the approval from the competent authority or were in existence prior to 17th April, 1964 in respect of the residential structures and 1st April, 1962 in respect of non-residential structures (before its demolition), it will be considered by the Building Proposal Department on its own merits as per the relevant provisions DCPR 2034 and more particularly Regulation 60, Appendix IV of the DCPR 2034. He submits that depending upon the category of a particular building, the plans may be approved as per the relevant regulations of DCPR 2034 i.e. Regulation 33 or Regulation 30 of the DCPR 2034 which is applicable.

68. Learned counsel for the Municipal Corporation justified the decision taken by the Technical Advisory Committee and submits that no interference is warranted with the said decision.

69. Insofar as submission of the learned counsel for the petitioners that even the Municipal Corporation has held that the petitioners were required to carry out various tests and to annex along with structural audit report is concerned, it is submitted that the said Proforma B

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referred to in the said letter of the Municipal Corporation is a format prescribed by the Municipal Corporation. The said proforma does not provide that such test should be mandatory also in case of a load bearing structure.

70. Mr. Tamboly and Mr. Daver, learned counsel for the petitioner in their rejoinder argument submitted that carrying out such test prescribed in Proforma B is mandatory. The tests are not carried out. The Technical Advisory Committee would not be able to decide whether the building is dilapidated and is under C-1 category or otherwise without conducting such tests.

REASONS AND CONCLUSIONS:

71. The questions that arise for consideration of this court in these two petitions are (i) whether non-destructive and other tests described in Proforma 'B' issued by the Municipal Corporation are required to be carried out necessarily before submitting Structural Audit Report and even if offending structure is load bearing structure? (ii) what are the powers of court under Article 226 of the Constitution of India to interfere with the order passed by the Technical Advisory Committee ("TAC") on the status of the building.

72. It is not in dispute that the said building in question is more than 100 years old and is a load bearing structure. The petitioners in both these petitions are admittedly occupying the ground floor structures having shops and carrying on business. Respondent no.5 landlord obtained a Structural Audit Report from the licensed structural consultant Shri Ramkrishan Kejriwal dated 10th August, 2020 certified that the said building was in a dilapidated condition and classified the said building in C-1 Category.

73. On the other hand, the petitioners appointed a Structural Auditor Shri Bhalchandra Oak who submitted a report on 15th July, 2021 classifying the building as a C2 B category thereby requiring “no eviction and only structural repairs” and subsequently classified it as C3 category requiring “minor repairs only.” In view of the conflict between these two opinions obtained by the parties, the Municipal Corporation referred both these reports to the TAC. The TAC visited the said building and made various visual observations.

74. On 14th October, 2021 after comparing both these structural audit

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reports submitted by the parties and after their own visual observations during the site inspection, the Technical Advisory Committee opined that the said building was in a dangerous and dilapidated condition and may collapse thereby endangering the life and property of the residents and passersby. The Technical Advisory Committee accordingly suggested that the said building/structure needs to be evacuated and demolished immediately and classified the said building as C-1 category.

75. Based on the said order passed by the Technical Advisory Committee on 14th October, 2021, further directions were issued by the Technical Advisory Committee on 1st December, 2021 directing the owner to take preventive measures such as propping of the building etc. to avoid any mishap. Respondent no.5 in turn called upon the petitioners to vacate their ground floor structures. It is not in dispute by the petitioners, that the upper floors occupied and used as widows home were vacated in the year 2019 by those occupants. According to respondent no.5, those widows were required to be moved to another hostel in view of the dilapidated condition of the said building.

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76. In view of the structural auditors report submitted by respondent no.5, the Municipal Corporation called upon the petitioner to submit a report from a Licensed Structural Auditor vide letter dated 28th May, 2021 requesting to submit such report along with Proforma 'B' based on non destructive testing which includes around ten tests.

77. It is the case of the petitioners that in pursuance of the said letter dated 28th May, 2021 issued by the designated officer and Executive Engineer, the petitioners obtained a report from Shri Bhalchandra Oak who carried out some of the tests described in the Proforma 'B'. It is not in dispute that after receiving of these two reports on record, the Technical Advisory Committee along with its members and several others visited the said building. We shall now deal with the issue as to whether any test as prescribed in Proforma 'B' was at all mandatory or necessitated for a structural audit report even if the structure was load bearing structure.

78. According to the report submitted by the structural engineer of the petitioners, the said building was constructed around 60 years back and according to the respondent no.5's Structural Engineer the said

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building was more than 100 years old. The learned counsel for the petitioners could not dispute before this court that the said building was more than 100 years old during the course of arguments. The petitioners also could not dispute that the report of Shri Bhalchandra Oak, the Structural Engineer appointed by the petitioners submitting a report was on the premise that the said building was about 60 years old.

79. A perusal of the said report submitted by Shri Bhalchandra Oak indicates the admitted position that the structure is a load bearing structure. The said report submitted by Mr. Bhalchandra Oak indicates that the observations made by the said Structural Engineer itself refers to the load bearing wall being 350mm thick equivalent to approximately 14 inches thickness.

80. A perusal of the report submitted by respondent no.5 also indicates that the said building is a load bearing structure. It is an undisputed fact that the structure is a load bearing structure. On visual inspection by the Technical Advisory Committee, the Technical Advisory Committee has also in the impugned order rendered a finding that the said structure is a load bearing structure. The Technical

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Advisory Committee accordingly held that no test was required. In support of the rival contentions of the parties, whether such test described in Proforma 'B' are required to be carried out or not, even in case of load bearing structure both the parties have relied upon various judgments for consideration of this court.

81. The Division Bench of this Court in the case of ***Bharat Choksey and Others*** (supra) accepted the contention of the Municipal Corporation that the test laid down by the Municipal Corporation appear to be in relation to the RCC structures and not in relation to load bearing structures. This Court held that so long as the judgment of this Court in case of *Municipal Corporation of Greater Mumbai v/s. State of Maharashtra*, holds that if the Technical Advisory Committee is not able to carry out the test laid down therein, the Technical Advisory Committee will have to give reasons as to why the test could not be conducted. It will ultimately depend upon the facts and circumstances of each case.

82. It is held that what is material is whether members of the TAC have applied their mind and whether the process adopted by the TAC is

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legal and proper. In that case, though the reasons were not specifically assigned by the TAC, this court held that as the structure of the building which was constructed in the year 1908 was not a RCC structure, the tests laid down could not be conducted. In our view, the principles laid down by this Court in the said judgment in the case of ***Bharat Choksey and others*** (supra) apply to the facts of this case. In the facts of this case also the TAC has opined that such tests described by the Municipal Corporation were not necessary in view of the said structure being a load bearing structure.

83. The learned single Judge of this Court in ***Anil Agrawal*** (supra) considered the facts where the TAC did not deem it necessary to order any non-destructive test including core test on the structural members of the building having regard to the nature of construction of it being partly RCC and partly load bearing. This court accordingly held that neither the approach of TAC nor the conclusion arrived at by it can be said to be either perverse or unreasonable. What TAC was expected to do was to assess the condition of the suit building having regard to the various structural reports before it. The TAC had duly applied its mind to the material circumstances disclosed in the reports. We are in

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agreement with the views expressed by the learned single Judge of this Court in case of **Anil Agrawal** (supra) and do not propose to take a different view on the issue whether non-destructive test and other tests are mandatorily required at all in the case of a load bearing structure or not.

84. Be that as it may, a perusal of the impugned order passed by the TAC indicates that after site visit by the TAC on 29th August, 2021 it was clearly observed that the building was ground plus 5 story load bearing building. The building was repaired in past by erecting steel beams and columns to support the structure in the south side. This conclusion was arrived at by the TAC on the basis of the IOD issued by the Municipal Corporation in respect of the south side wall including other completion certificate dated 30th July, 2014. The TAC also recorded a finding that there was heavy vegetation seen on external walls and top of the building.

85. TAC noticed that major vertical cracks were seen on the North West face of the floor from 2nd to 4th floor. Leakage marks, deflected and damaged lintel above window sill and and deterioration of wooden

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beams in slab were seen in some of the rooms on 1st to 3rd floor. Very heavy vegetation/root growth was seen on 3rd to 5th floor toilet blocks at each floor. On 4th floor in North West corner of the building some portion of the wall near the crack was also seen and have a tilted exterior. The wooden beam was seen broken due to wall separation in North West corner room. It was observed that the building was a load bearing building and the wall separation may lead to major collapse/incident in the building thereby making the entire building unstable.

86. A perusal of the said order passed by TAC further indicates that various queries were raised by the Technical Advisory members to the representatives of the structural consultants who had submitted their respective reports. It was pointed out to the Structural Engineer of the petitioners that the cracks were not superficial and were major cracks in load bearing walls and the repair methodology as suggested was not appropriate for such wide cracks in the load bearing walls. After considering the structural audit report submitted by both the parties, a visual inspection on site, report of the ward staff and relying on the observations and opinions of both the structural consultants, TAC

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found that the building was in distressed condition and may collapse any time and accordingly needs to be evacuated and demolished being in dangerous and dilapidated condition.

87. In our view the TAC rightly formed an opinion. We are not inclined to form a different opinion than the opinion formed by the TAC which opinion is after considering the structural audit report submitted by both the parties, after visual inspection of the building and after considering the various other material produced on record and considered in the impugned order. The impugned order further indicates that Shri Atul Kulkarni, the Deputy Chief Engineer (Building Proposal) City was the Chairman of the TAC, Shri R. S. Dholay, the Executive Engineer (Building Proposal) City-III was one of the member of the TAC. Shri Suraj Pawar, Sub Engineer (Building & Factory) Representative of Ward-E.E. 'C' Ward was also member of the said committee as Member Secretary. The meetings were also attended by Mr. Ambre, Assistant Engineer (Building Proposal) and the representatives of both the structural consultants.

88. The said TAC was constituted as per policy guidelines

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consisting of 4 members including Assistant Law Officer. There is no substance in the submission of the learned counsel for the petitioner that the order passed by the TAC is based on no reasons or based mechanically without considering the structural audit report submitted by the petitioners through their structural auditor. It is clear that the opinion formed by TAC that, no such non-destructive test or other tests were required in cases of load bearing structure was not merely taken on the basis of the statement made by both the parties, that it was a load bearing structure but after considering the factual situation that was derived after personal visit of the site by the members of the TAC who are engineers and experts in the field.

89. Perusal of the report submitted by Shri Bhalchandra Oak, the structural auditor appointed by the petitioners indicates that the said report proceeded on an erroneous basis that the said building was 60 years old which admittedly was factually incorrect. Be that as it may, the said report was on the basis of the test carried out by the petitioner in respect of ground floor structure only. The TAC considered these aspects in the impugned order rightly and accepted the report submitted by Structural Auditor appointed by the respondent no.5 having found it

more authentic and more particularly after visiting the site personally and after having interacted with the structural engineers representing the parties who had attended the meeting before TAC.

90. Insofar as the judgment delivered by the learned Single Judge of this Court in case of **Jaspal A. Wig & Ors.** (supra) pressed in service by the learned counsel for the petitioners is concerned, in our view the said judgment would advance the case of the respondent no.5 and not the petitioners. It is held in the said judgment that if the structure is a load bearing structure and if the non-destructive tests are not carried out and if there is proper explanation given by the TAC of the same, it cannot be said that the TAC has not followed the requisite procedure and therefore the conclusion arrived at by the TAC should be ignored. In the facts of this case, the TAC has recorded reasons as to why non-destructive test was not necessary to be carried out.

91. In our view, the TAC thus rightly formed an opinion that the non-destructive test and other tests were not required to be carried out in view of the structure being a load bearing structure. We do not find any infirmity in this view taken by the TAC.

92. We shall now deal with the scope of parties of a writ Court exercising powers under Article 226 of the Constitution of India while dealing with an order passed by the TAC opining that the building has become dilapidated and is required to be pulled down otherwise it might cause loss of lives of the occupants of the building.

93. This Court after adverting to its earlier judgment in case of ***Municipal Corporation of Greater Mumbai v/s. State of Maharashtra & Ors., 2018 SCC OnLine Bom.816*** held that the guidelines required the Corporation to conduct an independent inspection and assessment before classifying a building as category C-I. The structural audit was required which was to be taken into account. It is held that the Court is not permitted or even capable of determining whether the building is truly so ruinous as to warrant its demolition. This Court does not assess the structural condition of the building or its structural vulnerability. The Court only assess the vulnerability in law of demolition notices or the TAC recommendation or order. The Court addressed not to the decision itself, but to the process by which the decision was reached. The Court does not suggest that the mere age of

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a structure invariably and unquestionably means that it is ruinous or dilapidated.

94. This Court held that only when the petition makes out a sufficient cause for interference on one or more of the grounds, High Court is not entitled to intervene in exercise of its limited jurisdiction under Article 226 of the Constitution of India. In exercise of this limited jurisdiction of the High Court it cannot substitute its view for the technical view of the members of the TAC. It is only when the TAC is clearly demonstrated to have acted arbitrarily, malafide or in the manner that it can fairly be said to be perverse and that the TAC's order is implausible or one that no reasonable or rational person could ever take, that this Court will intervene. The principles laid down by this Court in the said judgment apply to the facts of the case.

95. In case of **Vivek Kokate and Ors.** (supra), a Division Bench of this Court after adverting to various judgments culled out the principles of law in paragraph 5 of the said judgment. It is held that it is never for a Court in exercise of its limited 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. 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 Bombay Municipal Corporation Act and by the provisions of the governing Maharashtra Rent Control Act, 1999 which fully occupies the field regarding tenancy of built premises in Maharashtra.

96. This Court adverted to the judgment of the Supreme Court in ***Saha Ratansi Khimji & Sons v/s. Kumbhar Sons Hotel Pvt. Ltd. & Ors., (2014) 14 SCC 1*** in which it was held that, the rights of tenants and occupants are unaffected by the required demolition. The tenants not only have rights but also remedies to keep their structure in tenantable repair. This Court in the said judgment in case of ***Vivek Kokate*** (supra) has held that 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. 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. This Court held that in order to succeed, a petitioner before the court must be able to show that the

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impugned action suffers from Wednesbury unreasonableness i.e. it is so unreasonable that no rational person could, having regard to the fact of the case, ever have reached it.

97. In the facts of this case, there are no allegations of perversity or of malafides with particulars. The principles laid down in the case of **Vivek Kokate** (supra) would apply to the facts of this case. We do not propose to take any different view in the matter.

98. A Division Bench of this Court in the case of **Jayant S. Karia** (supra) considered the power of writ Court while considering an order passed by the TAC. This Court held that merely by seeing photographs, the condition of the structure cannot be decided. Therefore, the structural audit reports, view of the experts are to be looked into. In such cases, Corporation authorities too are duty bound to resort to appropriate steps if it is found that the building/structure is in a dilapidated condition or dangerous for the occupants to live. It is an obligation on the authorities to take appropriate steps in accordance with law. In case portion of the building/structure collapses, then it is very likely that people residing in the said building would suffer loss of

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life, property or may suffer severe injuries. The Corporation is duty bound to avoid any loss of life and property to passersby, third parties and persons residing in the immediate neighbourhood of such building. From all these angles, such issues brought before the Court are required to be looked into.

99. This Court also held that in exercise of its writ jurisdiction, this Court would not sit over for reviewing the merits of the structural audit reports. It is the job of experts. The opinion of the experts reached with regard to the condition of the building being a subjective opinion, this Court would not substitute its view, even if the opinion suffers from some errors here or there. It is held that in cases of conflicting reports of the structural auditors, the TAC would look into and evaluate properly to decide regarding the sustainability of the structure. It is the TAC who shall take appropriate decision as to whether the building is in repairable condition or not and whether the persons should continue to occupy such building.

100. It is held that if the structure is in such a dangerous condition that it may collapse and cause loss of life and property, the TAC

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evaluates the same and submits the report accordingly. This Court accordingly held that they were not convinced to call for another report from IIT as suggested by the petitioners in that case. We are also not inclined to accept the suggestion of the petitioners to call for another report from structural engineer on the issue of whether non-destructive test or other tests can be carried out or ought to be carried out on the offending structures or not.

101. In the said judgment, this Court also considered the submission of the learned counsel for the tenants that the ground floor structure was in good condition and whether without disturbing the ground floor structure, the upper floors only could be demolished and ground floor structure could be redeveloped or not. This Court rejected the said submission on the ground that this Court cannot substitute its opinion to the view adopted by the TAC in its report in respect of the subject structure. We are thus not inclined to accept the submission of the learned counsel for the petitioners that the upper floors can be demolished and ground floor structures may be allowed to be retained. As per order of the Technical Advisory Committee, entire building is dilapidated.

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102. It is an admitted fact that the said building is situated on a plot of land in a very congested and crowded area of Bhuleshwar and lots of people are passing through the said road on which the said building is constructed. If this building is allowed to be retained, if any untoward incident occurs, there will be a loss of lives not only to the occupants of the building but also the passersby.

103. This Court while considering the submissions of the petitioners also cannot lose sight of an admitted position that the subject plot falls within the Coastal Regulation Zone (CRZ) and is affected by the sanctioned regular line of 29.26 meters i.e. 96 ft. approximately wide Jagannath Shankarseth Road and also that the subject plot abuts the proposed metro rail alignment or falls within influence zone of station areas thereof. We are thus not inclined to accept the submission of the learned counsel for the petitioners to permit to retain the ground floor structures more so on account of the report of the TAC declaring the entire building as C-1 category and as dilapidated. We also take note of the fact that the substantial part of the land beneath the building in question is affected by regular line as well as by metro and also as the

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subject plot abuts metro rail alignment or falls within the influence zone of the station area thereof. We are not impressed with the arguments of the learned counsel for the petitioners that the tenancy rights of the petitioners, if any, are in jeopardy if the demolition of the building takes place in compliance with the recommendation made by the TAC.

104. The apprehension of the petitioners is without any basis. The remedies of the petitioners or occupants insofar as their claim of tenancy or occupancy, it is protected in view of Section 354(5) of the Mumbai Municipal Corporation Act and also under the provisions of Maharashtra Rent Control Act.

105. The learned counsel for the petitioners could not dispute that a substantial part of the land beneath the same building is affected by sanction regular line of 29.26 meters and also that the subject plot abuts the proposed metro rail line or within influence zone station areas thereof. In the event of the said building being demolished in compliance with the recommendation made by the TAC and in case the respondent no.5 does not carry out the reconstruction of the building,

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the petitioners are always entitled to avail of the remedies in accordance with law for permission to carry out redevelopment itself.

106. In our view, while exercising powers under Article 226 of the Constitution of India, while dealing with the correctness of the recommendation made by the TAC and holding that the building is in dilapidated condition and may collapse any moment, thereby endangering the life of the occupants of the building and passersby, this Court cannot exercise powers of an appellate court in order to interfere with such findings of fact. The powers of writ Court to interfere with such order passed by the TAC comprising of experts on the subject cannot be lightly interfered with. The Court cannot sit as an appellate authority over the recommendations made by the TAC.

107. We are also unable to accede to the request of the petitioners, who are the occupants/tenant of the ground floor to repair the building and thereby protect their interests and rights and we cannot ignore the rights of the other occupants and/or the landlord of the building. If the submission of the petitioner is to be accepted and the upper floors beyond the ground floor are to be demolished, then the rights of the

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other occupants including that of the landlord could be severely prejudiced.

108. Mr. Bhosle, the learned counsel for the petitioners in Writ Petition (L) no.12803 of 2022 adopted the arguments advanced by Mr. Karl Tamboly along with Yash Dhakkad for the petitioners in Writ Petition (L) no.13705 of 2022. In addition to these arguments, he submitted that his client was not allowed to visit the upper floors of the building for the purposes of taking out a separate structural audit report.

109. Mr. Kamat, the learned counsel for respondent no.4 in this petition opposed the submission on the ground that the petitioner has no locus to file this writ petition as the petitioner had not obtained any structural audit report nor had appeared before the TAC. The issue relating to the claim of tenancy made by the petitioner is pending before the appellate court. In his rejoinder argument, Mr. Bhosale, the learned counsel for the petitioner states that even if his client is in occupation of the shop premises for last 17 years and has been paying rent to the respondent no.5. He submits that even if the petitioner has

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not undertaken any separate structural audit report in respect of entire building or with his structure, he is still a person aggrieved which gives him locus to file this petition. He is placing reliance on the structural audit report submitted by the other tenants occupying various shop premises on the ground floor. In our view petitioner in Writ Petition (L) no.12803 of 2022 is entitled to rely upon the Structural Audit Report submitted by the petitioners in the companion Writ Petition. The petitioner in the said Writ Petition has locus to file the said petition irrespective of the fact whether any eviction proceedings filed by the respondent no.5 are pending against the petitioner or not.

110. In our view, the learned counsel for respondent no.5 is right in his submission that the circular dated 1st January, 2018 issued by the Municipal Corporation describing certain guidelines in absence of regular guidelines is superseded by the regular guideline framed by the Municipal Corporation subsequently and thus no reliance could be placed on the said circular dated 1st January, 2018.

111. Both the writ petitions are totally devoid of merit. We accordingly, pass the following order;

(i) Notice dated 4th April, 2022, minutes of meeting of Technical Advisory Committee held on 14th October, 2021 and order dated 1st December, 2021 passed by Technical Advisory Committee are upheld.

(ii) The petitioners in both the writ petitions along with other occupiers, if any, of the offending structures are directed to remove themselves along with their articles and belongings within three weeks from today without fail and handover the vacant possession thereof to the respondent no.1 Corporation for carrying out demolition. The undertaking rendered by the petitioners forming part of the record of this Court also to continue for a period of three weeks from today.

(iii) It is made clear that the rights of the petitioners are not jeopardized by the order of demolition passed by the Technical Advisory Committee and upheld by this Court. The rights of the

petitioners are protected by Section 354 (5) of the Mumbai Municipal Corporation Act and the provisions of the Maharashtra Rent Control Act, 1999 and would remain unaffected by the required demolition.

(iv) The rights of the petitioners, if any, are also protected to apply for redevelopment of the entire building as may be permissible in law, if the respondent no.5 in Writ Petition (L) no.13705 of 2022 and respondent no.4 in Writ Petition (L) no.12803 of 2022 do not carry out redevelopment after demolition of the building within the time prescribed in law.

(v) If the petitioner and the other occupants of the shops on the ground floor of the building in question, do not vacate within three weeks from today and possession is not handed over to the Municipal Corporation, the Municipal Corporation will be at liberty to take forcible possession of all the respective shops and structures on the ground floor and if

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necessary take the assistance of the police to carry out the demolition thereafter expeditiously.

(vi) Writ Petition (L) no.13705 of 2022 and Writ Petition(L) no.12803 of 2022 are dismissed with the aforesaid clarifications.

(vii) Parties to act on an authenticated copy of this order.

(viii) There shall be no orders as to costs.

[KAMAL KHATA, J.]

[R. D. DHANUKA, J.]

At this stage learned counsel for the petitioners seeks stay of the operation of this order for a period of three weeks. Since this Court has already granted three weeks time to the petitioners to vacate, staying the operation of the order for three weeks is not warranted. Application for stay is accordingly rejected.

[KAMAL KHATA, J.]

[R. D. DHANUKA, J.]