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

WRIT PETITION NO.936 OF 2009

Suresh Prahalad Patil and Ors	...Petitioners
v/s.	
M/s.Nahar Enterprises and Ors.	...Respondents.

Ms.Hina A. Mody, for the Petitioners.

Ms.M.Kajale, AGP for the Respondent Nos.7 to 12.

Ms.Shobha Ajitkumar, for the Respondent – BMC.

Mr.Arif Bookwala, Senior Advocate a/w Mr.Ankit Lohiya,
Mr.M.L.Chaturvedi, Mr.D.V.Deokar, Mr.Pinakin Modi i/b M/s.Parimal K.
Shroff & Co., for the Respondent Nos.1 and 2.

**CORAM: A. S. OKA &
REVATI MOHITE DERE, JJ.**

DATED : 5th AUGUST, 2015.

P.C.

1. Heard the learned counsel appearing for the petitioners, the learned senior counsel appearing for the first and second respondents and the learned counsel appearing for the Mumbai Municipal Corporation.

2. There are only two substantive prayers in this petition which

are prayer clauses (a) and (b). The said prayers read thus :-

- “a) that this Hon'ble Court be pleased to issue a writ of Mandamus and writ of certiorari and/or a appropriate writ in nature of Mandamus and/or certiorari or any appropriate writ order and direction under Art.226 of the Constitution of India or any other writ or direction that the notice dated 24-10-2008 issued by the Dy Collector to the Petitioners which are at Exhibit “F” to F6 is illegal, unlawful, Bad-in-law and liable to be quash and/or set aside and not to act upon by the respondent.
- b) that this Hon'ble Court be pleased to issue a writ of Mandamus and writ of certiorari and/or a appropriate writ in nature of Mandamus and/or certiorari or any appropriate writ order and direction under Art.226 of the Constitution of India or any other writ or direction to recall the order passed on 13-8-2008 by His Lordship Mr.R.M.S. Khandeparkar and Shri Sayed J. in the writ petition No.1598 of 2008.”

3. We have perused the Judgment and Order dated 13th August, 2008 passed by the Division Bench of this Court in Writ Petition No.1598 of 2008 filed by the first and second respondents. The operative part of the directions issued by the Division Bench read thus :

- “6. In the circumstances, the petitioners are justified in seeking direction in the nature of prayer clause (a) and (b). Therefore,

the respondent Nos.5 & 6 are directed to carry out the survey and prepare a list of unauthorised structures and names of the persons residing therein within a period of twelve weeks, thereupon the respondent Nos.1 to 4 to take appropriate steps in accordance with law within four weeks thereafter.

7. Needless to say that the respondents would be entitled to get necessary protection in case it is required to conduct the survey and in that regard the respondent No.7 and 8 shall extend appropriate assistance to the respondent No.5 & 6 as well as to respondent Nos.1 to 4 for carrying out further action in the matter based on the survey so conducted”.

4. The direction issued by the Division Bench was to the Mumbai Municipal Corporation and to the State to carry out survey and to prepare list of unauthorised structures. The Municipal Corporation was directed to take action in accordance with the law. Thus, the direction of this Court was to carry out the survey for identification of unauthorised structures as well as the names of the persons who are occupying the unauthorised structures.

5. After identification of the unauthorised structures, the Municipal Corporation was directed to take action in respect of the

unauthorised structures in accordance with law. The second substantive prayer in this petition under Article 226 of the Constitution of India is for recall of the said Judgment and Order. We must state here that the Municipal Corporation challenged the said Judgment and Order by filing a Civil Appeal No.5159 of 2009. By Judgment and Order dated 6th August, 2014 for reasons recorded, the Apex Court confirmed the Judgment and Order dated 13th August, 2008. A perusal of the said Judgment shows that the Apex Court observed that the question whether the persons occupying a private land can be evicted by the Corporation depends on the availability of such powers under the law. Therefore, the Apex Court has kept the issue whether the Municipal Corporation can evict the persons occupying the private land expressly open. However, the Apex Court has held that the mandate of law is that the Municipal Corporation is required to remove the unauthorised structures after following due process of law

6. The submission of the learned counsel appearing for the petitioners is that the Judgment and Order dated 13th August, 2008 has been rendered without hearing the petitioners who will be directly affected by the action taken on the basis of the said Judgment and Order. The

second submission is that on the basis of the notices dated 24th October, 2008 issued by the Deputy Collector, the petitioners are likely to be evicted after demolition of the illegal structures.

7. As far as the prayer clause (b) is concerned, the prayer for recall cannot be considered on merits for two reasons. The first reason is that the Appeal preferred by the Municipal Corporation against the Judgment and Order dated 13th August 2008 has been dismissed after recording reasons. Secondly, in the Judgment and Order dated 13th August, 2008 no adjudication has been made by this Court as regards the authorization of structures allegedly occupied by the petitioners and as regards the rights of the petitioners. Therefore, prayer clause (b) cannot be granted.

8. As far as prayer clause (a) is concerned, we have perused the notices dated 24th October, 2008. By the said notices, the Deputy Collector (ENC/REM) has called upon the petitioners to submit the documents to enable the Deputy Collector to prepare a list as directed under order dated 13th August, 2008.

9. Even going by the order dated 13th August, 2008 the structures in possession of the petitioners can be demolished and the petitioners can be evicted only after following the due process of law which will include the compliance to the principles of natural justice. Therefore, merely because notices are issued to the petitioners on 24th October, 2008 calling upon them to submit the documents, the petitioners are not affected in any manner. Therefore, it is not necessary to grant even prayer clause (a). All contentions on the rights of the Petitioners remain expressly open.

10. Subject to what is observed above, the petition is disposed of.

(REVATI MOHITE DERE,J.)

(A.S. OKA,J.)