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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.178 OF 2015
IN
WRIT PETITION NO.975 OF 2010

Janseva Trust & Anr.	..Applicants
<u>In the matter between</u>	
M/s. Sumer Corporation	..Petitioner
<i>Versus</i>	
The State of Maharashtra & Ors.	..Respondents

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Mr. Sushil Upadhyay h/f Mr. Ashok Saraogi for the Applicants.
Ms. Yasmin Bhansali i/b. M/s. Yasmin Bhansali & Co. for the
Petitioner.
Mr. Milind More, Addl. G.P. for the Respondent-State.
Mr. A. Y. Sakhare, Senior Advocate, a/w Ms. T. H. Puranik for the
Respondent-BMC.
Mr. G. D. Utangale a/w Mr. Akhil Kupade i/b. Utangale & Co. for
Respondent No.2-SRA.

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**CORAM: MOHIT S. SHAH, C.J. &
A. K. MENON, J.**

DATE : 23 JULY 2015.

PC.:

Janseva Trust claiming to be a trust registered under the
Bombay Public Trusts Act having its office situated at building
no.13/D-406, Sangharsh Nagar, Chandivali, Andheri (East), Mumbai-
72 and Mr. Rupas Kashiram Kalkatte claiming to be a trustee have

taken out this chamber summons for impleading them in writ petition no.975 of 2010 and for the following relief:-

“that pending the hearing and final disposal of the present petition, the respondents be directed to consider the documents and give personal hearing to the applicants before taking any action of demolition on such terms as this Court may deem fit and proper.”

2] Mr. More, learned Additional Government Pleader, Mr. Utangale, learned counsel for SRA and Ms. Yasmin Bhansali, learned counsel for the petitioner-M/s. Sumer Corporation have opposed the chamber summons and submitted that as per order dated 24 November 2014 followed by order dated 29 June 2014, the respondents are taking necessary action for removal of encroachment from Amenity Plot No.2 which is reserved in the development plan for playground. The direction was to remove encroachment from the above plot to enable the petitioner to lay down the storm water pipes.

3] The learned counsel for the applicants submits that the father of applicant no.2 has some documents to show that he was occupying the structure in question since 1980.

4] However, when the hearing was given to the applicants on 16 February 2015, the applicants did not submit any document in support of the case that the structure in question was in existence prior to 1 January 2000 which is the cut-off date.

5] The learned counsel for the applicants submits that some time should have been granted to the applicants to produce the documents. The trust claims to be running a school in the disputed structure which is 500 sq. ft. in area.

6] According to the petitioner-M/s. Sumer Corporation, the disputed structure was put up by the petitioner for storing construction material for the project. Our attention is also invited to the map of the area in question where there is a Municipal school building constructed by M/s. Sumer Corporation as a part of the scheme entrusted to M/s. Sumer Corporation. The learned counsel for M/s. Sumer Corporation has submitted a statement indicating the names of schools and it is shown that St. Paul High School is situated in Kandivali and St. Paul Public School is situated in Kurla but there is no such school in Chandivali area. It is submitted on behalf of the respondents that the applicants are not running a school but at the most may be running a coaching class for the last few months.

7] The applicants have not been able to show that St. Paul Public School which is being allegedly run in the disputed structure as per the applicants claim, was established prior to 1 January 2000. We find that even the letter-head of applicant no.1 trust itself shows that the trust was registered in the year 2010.

8] In view of the above material on record, we do not find any merit in the contention of the applicants that the so-called school in question was set up prior to 1 January 2000. In any case, no case is made out for granting any stay against demolition of the disputed structure being building no.13/D-406, Sangharsh Nagar, Chandivali, Andheri (East), Mumbai. The chamber summons is, therefore, dismissed.

CHIEF JUSTICE

(A. K. MENON, J.)

wadhwa