

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

WRIT PETITION (L)NO.2442 OF 2016

Shaikh Sarfaraz Ahmed Mubin
Ahmed and 2 others Petitioners.
V/s.

Municipal Corporation of Greater Bombay
and 2 others Respondents

Ms. Najafiya Akeel Shroff, for the Petitioners.
Mrs. Geeta Joglekar, for the Respondent Corporation

**CORAM : RANJIT MORE AND
DR. SHALINI PHANSALKAR-JOSHI, JJ.**

DATE : 21st SEPTEMBER, 2016.

P.C. :

1. Heard learned counsel for the petitioners and learned counsel for respondent Municipal Corporation.
2. By this petition filed under Section 226 of the Constitution of India, the petitioners are challenging the public notice dated 28.6.2016 under Section 314 of the Bombay Municipal Corporation Act. By the said notice, the petitioners are directed to remove the subject structure with their belongings, within 7 days from the service/display of the notice on site, failing which the said structure and all things deposited thereon will be removed.
3. The impugned notice is issued in pursuant of the order dated

24.2.2015, passed by the Division Bench of this Court, in Public Interest Litigation No.95 of 2014. By the said notice, this Court directed the Deputy Collector (RE) WS to decide the eligibility of affected structure falling within 120 feet wide D.P. road and further directed MCGM to remove structure, if it fall within 120 D.P. Road.

4. On behalf of Respondent Corporation, Assistant Engineer (Maintenance) Shri. Sanjay U. Borse, has filed affidavit-in-reply dated 19th September, 2016. In paragraph No. 4(g), categorical statement is made that in pursuant of the said order, the Corporation has to remove all structure within alignment of 120 ft wide D.P. Road. In paragraph No. 4(d), statement is also made that as per Annexure-II prepared by Deputy Collector (RE), all the hutments within alignment of 120ft D.P. road, are non eligible. In paragraph No.4(e), statement is made that the present petitioners are held non eligible for alternate accommodation as per Annexure II prepared by the Deputy Collector.

5. The counsel for the petitioners does not dispute that the petitioners are held non eligible for alternate accommodation. The counsel for the petitioners further submitted that the petitioners have challenged their non eligibility by filing appeal under Section 35 of the Slums Act, which is pending before the Appellate Authority.

6. In the above facts and circumstances, we find that the petitioners hutment is obstructing widening work of 120ft D.P. Road . The

structure, therefore, requires to be removed in pursuant of the order passed by this Court.

7. Though as stated above, petitioners are held non eligible for alternate accommodation, the appeal filed by the petitioners is pending before Appellate Authority. In the event, petitioners succeed in the appeal, respondent corporation is bound to provide alternate accommodation. However, at the instance of petitioners, construction of D.P. Road cannot be held up.

8. We find no merit in the petition and the same is accordingly dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]