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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2906 OF 2016
WITH
CHAMBER SUMMONS (L) NO.253 OF 2017
IN
WRIT PETITION NO.2906 OF 2016**

Mr. Jatanraj Deepchandji Navlakha and Ors. ... Petitioners
Vs.
Municipal Corporation for Greater Mumbai and Ors. ... Respondents

Mr. A.G. Damle, Senior Counsel a/w Mr. V.B. Mishra for the Petitioners.
Ms. Vandana Mahadik for the Respondent.

**CORAM : A.S. OKA &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 3rd AUGUST, 2017

PC.

1 Heard the learned Senior Counsel appearing for the
Petitioners. Prayer clause (a) of this Petition reads thus :-

“(a) This Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction under article 226 of Constitution of India calling for the said conveyance dated 05.07.1980 and after perusal of the same and the illegality thereof, be pleased to declare that the said conveyance dated 05.07.1980 is a illegal and fraudulent document in

respect of the land belonging to the Petitioners i.e. Land bearing survey No.178, Hissa No 3 (part), corresponding CTS No 879 (part) admeasuring about 10 Gunthas equivalent to 1210 sq. yards and 1011.50 sq. meters situated at Village Kurla-II, Taluka Kurla, Mumbai suburban district and the same is wholly arbitrary, highly illegal, unjust, and unconstitutional and contrary to the provisions of law of land acquisition.”

2 The letter at Exhibit – J shows that the Mumbai Municipal Corporation is claiming title on the basis of a registered conveyance deed executed on 5.7.1980, particulars of which are mentioned in the said letter. Ultimately, the issue is of the contesting claims of the title claimed by the petitioners and the Mumbai Municipal Corporation. Considering prayer clause (a), the petitioners will have to seek appropriate remedy before the Civil Court.

3 Prayers (b) and (c) are consequential prayers.

4 The Chamber Summons seeks deletion of prayer clause (a) and substitution thereof by prayer clauses (a) and a(i) which read thus :

“a) This Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction under articles 226 of the Constitution of India,

directing the Respondents to produce the said conveyance dated 05.07.1980 before the Hon'ble Court.

a(i) This Hon'ble Court be pleased to declare that the dealing/ act of the Respondents with respect to the suit land (the land subject of the petition) is illegal and not binding on the Petitioners.”

4 As is clear from the letter at Exhibit – J, the Municipal Corporation is claiming ownership on the basis of a registered conveyance. The particulars of the conveyance such as registration number have been set out in the said letter. Hence, amended prayer clause (a) cannot be sought by way of writ of mandamus inasmuch as the petitioners can always obtain declaration of the title claimed by them. Prayer clause a(i) again proceeds on the footing that the Municipal Corporation has no title and the petitioners continue to be the owner. Therefore, Chamber Summons cannot be granted. No relief can be granted to the petitioners in writ jurisdiction under Article 226 of the Constitution of India. Accordingly, we dispose of the Petition and the Chamber Summons by granting liberty to the petitioners to adopt appropriate remedy before the Civil Court. All contentions on merits are kept open.

(SMT. VIBHA KANKANWADI, J)

(A.S. OKA, J)