

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

WRIT PETITION (LDG.) NO. 3355 OF 2017

Mr.Balwant Timber Mart. ... Petitioner.
V/s.
Municipal Corporation of Greater Mumbai
and another. ... Respondents.

WITH
WRIT PETITION (LDG.) NO. 3356 OF 2017

M/s.Nagji Nenshi Shah. ... Petitioner.
V/s.
Municipal Corporation of Greater Mumbai
and another. ... Respondents.

WITH
WRIT PETITION (LDG.) NO. 3357 OF 2017

Manish Nanji Shah. ... Petitioner.
V/s.
Municipal Corporation of Greater Mumbai
and another. ... Respondents.

Mr.Amogh Singh with Mr.D.P.Singh for the petitioners in all matters.

Mr.N.V.Walawalkar, Senior Advocate with Ms.Kejali Mastakar
for respondent No.1.

Mr.R.S.Apte, Senior Advocate with Mr.Ravi Thankaian
for respondent No.2 in WPL-3355/17.

Mr.Akash Rebello with Mahesh Mishra i/b. Ravi Thankaian
for respondent No.2 in WPL-3356/17 and WPL-3357/17.

CORAM : A.S.OKA AND M.S.SONAK, JJ.

DATE : 20th December 2017.

PC.:

Heard the learned counsel appearing for the petitioners, the learned senior counsel for the first respondent and the learned senior counsel for the second respondent. Considering the narrow controversy involved, the petitions are forthwith taken up for final hearing and disposal. Rule. The respondents waive service. Essentially, the challenge in these petitions under Article 226 of the Constitution of India is to the notices issued by the first respondent- Municipal Corporation under section 314 of the Mumbai Municipal Corporation Act, 1888 (for short "the said Act") and the order passed thereon on 17th November 2017 by the Assistant Municipal Commissioner.

2. On the earlier date, we had heard the parties with a view to find any workable solution. The learned senior counsel appearing for the first respondent, on instruction, stated that the first respondent will be willing to give benefit of circular dated 20th March 2017 subject to condition of the petitioners agreeing to remove the structures falling within the road-line. However, an amicable solution could not be worked out for various reasons. Accordingly, we have taken up the petitions for final disposal.

3. For challenging the notices under section 314 of the said Act, the present petitioners filed separate suits in the City Civil Court, Mumbai. Prayer for ad-interim relief was rejected. Being aggrieved by the said

order of the learned Judge of the City Civil Court, appeals from order were preferred by the present petitioners. The appeals from order were disposed of by the order dated 1st November 2017 by the learned single Judge of this Court. By the said order, the Assistant Municipal Commissioner was directed to pass an appropriate order after hearing the parties. The order of the learned Single Judge records that the Assistant Municipal Commissioner, considering the peculiar facts, shall endeavour to find out some solution and that is the reason why the Assistant Commissioner was permitted to call the second respondent at the time of hearing. Accordingly, a common order has been passed by the Assistant Municipal Commissioner on 17th November 2017. The said common order purports to give effect to the alleged understanding/ agreement between the petitioners and the second respondent. The impugned order does not decide the issue whether the subject structures can be demolished by the exercise of power under section 314 of the said Act.

4. On plain reading of the impugned order, it appears that what is decided is beyond the scope of section 314 of the said Act. However, the learned senior counsel appearing for the first respondent rightly pointed out that it is perhaps because of the observations made by the learned single Judge, an attempt has been made by the Assistant Municipal Commissioner to find out via media.

5. Perusal of the operative part of the impugned order shows that the said order can be implemented provided the petitioners and the second respondent enter into an agreement and take further steps as

provided in the operative part of the order. After hearing the petitioners and the second respondent, it is apparent that there are ongoing disputes between them and, therefore, implementation of the impugned order starting from execution of development agreement appears to be highly improbable.

6. The notices under section 314 of the said Act are issued to the petitioners by the first respondent- Municipal Corporation as, according to the case of the first respondent, the subject structures are affected by the road-line.

7. As no amicable solution could be found and as the impugned order is not capable of being implemented, the only option available is to set aside the impugned order and to direct the Assistant Commissioner to pass an appropriate order on the notices under section 314 of the said Act in the light of reply filed by the petitioners to the said notices and in the light of the documents produced by the petitioners. We make it clear that now the issue to be considered by the Assistant Municipal Commissioner is whether action of demolition can be taken within the four corners of section 314 of the said Act and it is not necessary for the Assistant Commissioner to see whether any workable solution is possible as all such attempts have failed.

8. Only on the ground that the second respondent was heard before passing the impugned order that, without going to the issue of locus of the second respondent, we propose to direct the Assistant

Commissioner to give an opportunity of being heard to the second respondent.

9. Accordingly, we pass the following order:

- (i) The impugned order dated 17th November 2017 is quashed and set aside only in so far as the petitioners in these three petitions are concerned;
- (ii) We direct the petitioners and the second respondent to appear before the Assistant Municipal Commissioner on 27th December 2017 at 11.00 a.m. for fixing the date of hearing. We make it clear that even if a copy of this judgment and order is not available, as all the concerned parties are before the Court, the petitioners and second respondent shall appear before the Assistant Municipal Commissioner on the date and time fixed;
- (iii) An appropriate order shall be passed by the Assistant Municipal Commissioner, H(West) Ward in the light of the observations made in this order as expeditiously as possible;
- (iv) All contentions on merits are kept open;
- (v) The orders passed by the Assistant Municipal Commissioner shall be communicated to the petitioners. Till the date of communication of the orders passed on the notices under section 314 of the said Act, an action of demolition shall not be taken by the first respondent;
- (vi) If the orders be adverse to the petitioners, the action of demolition shall not be taken for a further period of two

weeks from the date on which the said order is served to the petitioners;

- (vii) We make it clear that neither the petitioners nor the second respondent will seek unnecessary adjournments during hearing and they shall co-operate with the Assistant Municipal Commissioner for passing an order at the earliest;
- (viii) We make it clear that the offer made by the first respondent-Municipal Corporation to grant benefit under the circular dated 20th March 2017 was not on the basis of consideration of eligibility of the petitioners. The said offer was given by the first respondent only with a view to find out an amicable solution. It is obvious that the said statement made by the first respondent that the benefit of Kurar Pattern will be made available to the petitioners will no longer bind the first respondent. However, we make it clear that it will always be open to the petitioners to contend that if the structures of the petitioners or part thereof are required to be demolished, the policy dated 20th March 2017 is applicable;
- (ix) All the petitions are disposed of in the above terms with no costs.
- (x) All concerned to act on an authenticated copy of this order.

(M.S.SONAK, J.)

(A.S.OKA, J.)