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

WRIT PETITION (L) NO. 232 OF 2018

Sultan Beerma Bohat & 2 Ors.	... Petitioners
<i>Versus</i>	
Municipal Corporation for Gr. Mumbai	... Respondent

Mr. Virendra T. Dubey, for the Petitioners.
Ms. Geeta Joglekar, for Respondent – BMC.

**CORAM: A.S. OKA AND
RIYAZ I. CHAGLA, JJ.**
DATED: 11TH APRIL 2018.

ORAL JUDGMENT (Per A.S. Oka, J.)

1. Heard learned counsel appearing for the Petitioners and the learned counsel appearing for the Respondent. Considering narrow controversy involved in the Petition, the same is forthwith taken up for final disposal. We issue Rule. Advocate for the Respondent waive service.

2. This Petition is filed on the basis of an apprehension that the structures of the Petitioners will be demolished for the implementation of the directions issued by this Court in PIL No. 140 of 2006. Directions were issued by this Court to demolish all structures which are standing within the distance of 10 mtrs. from

main pipelines supplying water to the city of Mumbai. There are two contentions raised in the Petition. The first is that the structures are situated on the land bearing CTS Nos.23, Taluka Kurla District, Mumbai Sub-urban District which is a privately owned land as can be seen from the property register cards annexed as Exhibit "A1" collectively. The property register card at Page 24 A is in respect of the land bearing survey No.23 which shows that in the year 1967, one Shri V.G. Kriyado was the holder. The property register card shows that Shri Kaulchand Hastimal Jogani and Shri Suresh K. Jogani are the lessees. The property register cards in respect of CTS 23/1 to 23/36 which are in respect of the structures on CTS No. 23 show the same names. The second contention is that the structures subject matter of this Petition are not within the distance of 10 mtrs. from the pipeline.

3. There is a reply filed by Shri Naresh Malvankar, Sub Engineer (Maintenance) 'L' Ward of the Respondent – Municipal Corporation. The reply shows that on 15th March 2018, site inspection was carried out by the Municipal Officers after notice to the Petitioners. A report prepared showing demarcation is annexed to the reply. It shows that about 70% of the size of the structures of the Petitioners are falling within the distance of 10 mtrs. and remaining portions are outside 10 mtrs.

4. On the earlier date, we had made query to the learned counsel appearing for the Respondent as to whether benefit of the policy of the Respondent – Corporation known as 'Kurar Pattern' can be extended to the Petitioners. Today, on instructions, the learned counsel appearing for the Respondents states that the Petitioners are held as not eligible for rehabilitation and therefore, benefit of 'Kurar pattern' cannot be extended.

5. Only limited prayer made in the Petition is for enjoining the Respondent Corporation not to demolish the structures without following principles of natural justice. There is nothing placed on record to show that due process of law has been followed by the Respondent.

6. This is a case where the photocopies of the property register cards annexed to the Petition show that, *prima facie*, the structures of the Petitioners are on a private property. Moreover, there is nothing placed on record to show that the structures are situated on a public property. Therefore, this Petition will be governed by the judgment and order in the case of **Navinchandra Shyamji Chhaddva & 13 Ors. Vs. State of Maharashtra & 4 Ors¹**.

1 Writ Petition No. 454 of 2016 decided on 1st March, 2018.

7. Considering the above discussion and for the reasons recorded in the said judgment and order, we pass following order:-

a) We hold that in the facts of the case and reasons set out above that the action of demolition shall not be taken against the structures subject matter of this Petition without following due process of law as indicated in the judgment and order dated 1st March 2018;

b) We make it clear that we have not made final adjudication on the question whether the structures subject matter of this Petition are protected under any policy or law;

c) We have also not made final adjudication on the question whether the land below structures is privately owned;

d) All the aforesaid issues will have to be decided when due process of law is adopted by the Respondent – Corporation;

d) Rule is therefore made partly absolute on above terms.

e) All concerned to act on an authenticated copy of this order.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)