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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.1032 OF 2016**

Sushila Ramesh Kharat

... Petitioner

Vs.

The State of Maharashtra and Ors.

... Respondents

Mr. Yuvraj D. Patil for the Petitioner.

Mr. Manish Upadhyay, AGP for the Respondent No.1.

Ms. Pallavi Thakar for the Respondent – BMC.

**CORAM : A.S. OKA &
P.N. DESHMUKH, JJ.**

DATE : 9th FEBRUARY, 2018

PC.

1 Heard the learned counsel appearing for the petitioner. The structure in possession of the petitioner has been demolished by the Mumbai Municipal Corporation on the ground that it falls within the distance of 10 meters from Tansa Pipeline. As per the Judgment of this Court in PIL No.140 of 2006, a direction was issued to clear the structures situated on both sides of Tansa Pipeline within the distance of 10 meters. It appears that the petitioner was held to be ineligible for grant of alternate accommodation. After the Petitioner was held as ineligible, the petitioner preferred an appeal before the Appellate Authority constituted by the Mumbai Municipal Corporation. The first

Appellate Authority dismissed the Appeal by order dated 30th April, 2015 and the second Appellate Authority dismissed the Appeal by order dated 17th April, 2015. Both the orders were set aside by the Judgment and Order dated 19th October, 2015 passed by this Court in Writ Petition (L) No.2831 of 2015. Thereafter, the case of the petitioner was ordered to be reconsidered. Accordingly, the Assistant Commissioner, T Ward by order dated 18th February, 2016 held that the petitioner is ineligible for allotment of alternate accommodation on the ground that she has failed to produce evidence to show that her structure was in existence on 1st January, 2000. It was held that the petitioner could not produce the documents which are set out in the Annexure to the Government Resolution dated 16th May, 2015.

2 The submission of the learned counsel appearing for the petitioner is that the census of slum structures was carried out in the year 2000-2001 and accordingly a form was filled in by the petitioner on 15th July, 2000 a copy of which is annexed at Exhibit- D. He relied upon a death certificate and two birth certificates. The birth certificates are of the sons of the petitioner and the death certificate is of her husband showing the address of Pipeline Ramabaipada, Mulund Colony. His submission is that the said document shows the existence of the structure prior to 1st January, 2000.

3 The learned counsel appearing for the Municipal Corporation submitted that the case of the petitioner has been considered in the light of the Government Resolution dated 16th May, 2015.

4 We have given consideration to the submissions. The petitioner was served with the notice dated 13th February, 2015 by which she was called upon to produce the documents for considering her eligibility for grant of alternate accommodation. It is stated in the notice that the structure is situated within the distance of 10 meters from Tansa Pipeline. The address of the petitioner mentioned therein is Tansa Pipeline, Mulund Colony. We have perused the death certificate of petitioner's husband which is registered on 30th April, 1993 in which the address of the petitioner is shown as Mulund Colony, Pipeline, Ramabai Pada. There are birth certificates of the sons of the petitioner of 19th May, 1988 and 2nd August, 1982 which record the address as Pipeline, Ramabai Colony. The entries made in the birth register of the two sons were also produced which show the address of birth as Pipe line, Ramabai Colony, Zopadpatti, Mulund. The petitioner is relying upon the Bank Passbook issued by the Bank of India, Mulund Branch on 11th January, 1992 which shows the address as Ramabai Pada, Mulund Colony, Mumbai. These are the documents, which according to us,

prima facie, show that the petitioner's structure was in the vicinity of the Tansa Pipeline. The aforesaid documents which were produced before the Assistant Commissioner have been ignored on the ground that none of the documents as specified in Annexure – 2 of the Resolution dated 16th May, 2015 have been produced. It appears from the stand of the Municipal Corporation that the occupants of the residential structures will be eligible for rehabilitation provided the structures were in existence on 1st January, 2000 and the persons concerned were in possession on that day. According to us, the documents to which we have referred earlier could not have been ignored as the evidence of existence of structure on 1st January, 2000 and the possession of the petitioner thereof on that date. The petitioner's structure has been already demolished. What is laid down in the GR dated 16th May, 2015 as far as requirements of production of documents are concerned, is only for guidance. If there is a strong evidence produced by a person showing that his structure was in existence on 1st January, 2000 and that he was in possession on that day, nothing prevents the Municipal Corporation from considering the said documents for deciding the issue of eligibility.

5 It appears from the document at Exhibit – D that survey of the structure of the petitioner was carried out and the petitioner

submitted necessary form on 15th July, 2000. The Assistant Commissioner could have always looked into the record of the survey. Therefore, we are of the considered view that the case of the petitioner needs reconsideration and accordingly, we pass the following order :-

ORDER

- (i) The impugned order dated 18th February, 2016 is quashed and set aside. We direct the petitioner to appear before the Assistant Commissioner, 'T' Ward on 15th March, 2018. The Assistant Commissioner shall reconsider the documents produced by the petitioner and decide the issue of eligibility of the petitioner to grant alternate accommodation in the light of the observations made in this order;
- (ii) Appropriate decision shall be taken by the Assistant Commissioner within a period of three months from 15th March, 2018. The decision shall be communicated to the petitioner;
- (iii) All contentions of the parties on merits are kept open;
- (iv) The Petition is partly allowed in above terms.

(PN. DESHMUKH, J)

(A.S. OKA, J)