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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.2455 OF 2017**

Mr. Sadashiv L. Shenoy and Ors.	... Petitioners
Vs.	
State of Maharashtra and Ors.	... Respondents

Mr. Madhur Rai i/by PRS Legal for Petitioners.
Mr. Sukanta Karmakar, AGP for Respondent – State.
Ms. Shital Mane for Respondent – BMC.

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

DATE : 9th FEBRUARY, 2018

PC.

1 Heard the learned counsel appearing for the petitioners, the learned counsel appearing for the Mumbai Municipal Corporation and the learned AGP for the State. Considering the narrow controversy involved in the Petition, the same is forthwith taken up for final disposal. In fact, the order to that effect was passed on 13th December, 2017. The challenge in this Petition under Article 226 of the Constitution of India is to the proposed action of the Municipal Corporation of demolishing the structures of the petitioners. The structures are sought to be demolished on the ground that they are falling within the distance of 10 meters from the Tansa Pipeline and

therefore, the same are required to be demolished as per the directions issued by this Court in PIL No.140 of 2006. There are various contentions raised in the Petition. One of the contentions is that the petitioners' structures are not situated within the distance of 10 meters from Tansa Pipeline. It is the contention of the petitioners that the survey and measurements are not properly carried out by the Municipal Corporation and in fact the work of carrying out survey was left to a private agency. The second contention apart from other contentions is that the structures are situated at private property and due process of law has not been followed. The learned counsel appearing for the Municipal Corporation submitted that action is initiated only after it was found that the structures are situated within the distance of 10 meters from Tansa Pipeline.

2 The Petitioners are relying upon the photographs and other documents in support of their contentions that their structures are not within the distance of 10 meters from Tansa Pipeline. There is nothing on record to show that the survey for deciding whether the structures were falling within the distance of 10 meters from Tansa Pipeline was carried out after notice to the petitioners or in their presence. The structures of the petitioners are sought to be demolished only on the ground that the same are within the distance of 10 meters from Tansa

Pipeline. Therefore, it will be appropriate if the measurements are carried out after notice to the petitioners for ascertaining whether their structures are within the distance of 10 meters. We, accordingly, dispose of the Petition by passing the following order :-

ORDER

- (i) We direct an authorised representative of the petitioners and appropriate officer of the second respondent to remain present on the site on 5th March, 2018 at 11.00 am when the officers of the second respondent – Municipal Corporation will carry out measurement in presence of representative of the petitioners for deciding whether any part of the construction made by the petitioners subject matter of this Petition falls within the distance of 10 meters from Tansa Pipeline. A sketch and panchanama shall be drawn on the site;
- (ii) If the officers of the Municipal Corporation on taking measurement find that no part of the subject structures of the petitioners falls within the distance of 10 meters from Tansa Pipeline, action of demolition of the structures or any part thereof on the basis of the directions contained in PIL No.140 of 2006 shall not be taken. A copy of the sketch and panchanama drawn at

the site shall be immediately handed over to the representative of the petitioners at the site;

- (iii) In the event, the Municipal officers find that structures of the petitioners or parts thereof fall within the distance of 10 meters from Tansa Pipeline, we direct that action of removal shall not be taken on the basis of the impugned notices. We direct the Assistant Engineer or any other officer competent to pass orders after considering the reply dated 22nd May, 2017 and after considering the documents produced alongwith reply to pass a reasoned order;
- (iv) The reasoned order shall be communicated to the petitioners. Till the date of communication of the orders, action of demolition shall not be taken in respect of the structures subject matter of this Petition on the basis of the directions issued in PIL No.140 of 2006. If the orders be adverse to the petitioners, the action of demolition shall not be taken for a period of three weeks from the date on which the orders are served to the petitioners;

(v) We make it clear that we have made no adjudication on the merits of the claim made by the petitioners and all contentions are kept open;

(vi) Rule is made partly absolute on above terms.

(PN. DESHMUKH, J)

(A.S. OKA, J)