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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.2968 OF 2017**

Minakshi Anil Bansode and Ors.	... Petitioners
Vs.	
The State of Maharashtra and Ors.	... Respondents

Mr. Saurabh Butala a/w Mr. A.P. Khadge i/by Mr. H.A. Sathe for the Petitioners.

Mr. A.Y. Sakhare, Senior Counsel a/w Ms. Shital Mane for the Respondent – BMC.

Mr. A.P. Kulkarni for the Respondent No.3.

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

DATE : 9th FEBRUARY, 2018

PC.

1 Submissions were heard on the earlier date. The challenge in this Petition under Article 226 of the Constitution of India is to the action of demolition against the structures of the petitioners on the basis of the orders passed in PIL No.140 of 2006 under which a direction was issued to demolish all structures within the distance of 10 meters from Tansa Pipeline. At the outset, the learned counsel appearing for the petitioners seeks permission to delete petitioner Nos.82 and 83. The petitioner Nos.85, 86, 88, 93, 95, 96, 99, 103, 106

and 113 have tendered unconditional undertakings to vacate their respective premises on or before 30th April, 2018. The prayer made by the learned counsel appearing for the petitioners is for grant of time to the said petitioners as they have school going children in their family and therefore, they will find it difficult to shift the school going children to another school.

2 We have perused the undertakings. Except in case of undertaking by Petitioner No.85, it is stated that in the family of the concerned petitioners there are children who are studying either in schools or junior colleges. As far as petitioner No.85 is concerned, his son is studying in second year graduate course. Therefore, there is no reason to grant time to vacate to the petitioner No.85. He will have to accept the alternate accommodation. To enable him to do so, we propose to grant him reasonable time. To other petitioners in other Petitions, we have given time till 30th April, 2018 only on humanitarian grounds. The ground is that the children who are part of their respective families are studying in school or in junior college. The second reason why we are granting time is in the light of unconditional undertakings given by the concerned petitioners to vacate their structures on or before 30th April, 2018 and to accept the alternate accommodation offered at Mahul. There are certain other petitioners

who are held to be eligible and who have not accepted the keys of alternate accommodation as yet. We propose to grant reasonable time to them to accept the keys and to vacate the premises in their possession. Another category of petitioners is of those who have been held to be ineligible for grant of alternate accommodation and who have preferred Appeals. The last category is of those petitioners who have been held ineligible for grant of alternate accommodation but who have not preferred Appeals.

3 Those who have preferred Appeals will have to be protected till the disposal of their Appeals and for a reasonable time thereafter as they cannot be evicted without there being any final decision on the issue of their eligibility. In view of the aforesaid factual position, we dispose of the Petition by passing the following order :-

ORDER

- (i) We grant time to the petitioner Nos.86, 88, 93, 95, 96, 99, 103, 106 and 113 till 30th April, 2018 to vacate the structures in their respective possession. The undertakings on oath furnished by the said petitioners are accepted. We make it clear that the said petitioners will not be entitled to further extension of time and on their failure to vacate

their respective premises on or before 30th April, 2018, the Municipal Corporation shall demolish their structures without issuing any further notice;

- (ii) As far as the petitioner No.85 is concerned, we grant him time of six weeks to accept the keys of the alternate accommodation and to shift to the alternate accommodation. On expiry of period of six weeks from today, it will be open for the Municipal Corporation to demolish his structure without further notice;
- (iii) The learned counsel appearing for the petitioners pointed out that the petitioner Nos.89, 97, 98, 100, 101, 104, 105, 107, 110 to 112, 114, 115, 117, 118, 121 to 130 have accepted the keys of the alternate accommodation offered to them. Therefore, there is no reason to protect their structures and this Petition as far as the said petitioners are concerned, stands dismissed;
- (iv) As regards the petitioner No.94, though he is held to be eligible and though he has accepted the letter of allotment, he has not accepted the key. We grant time of six weeks to the said petitioner to accept the possession of the alternate

accommodation and to shift to the alternate accommodation. On failure of the said petitioner to vacate his structure within a period of six weeks from today, it will be open for the Municipal Corporation to demolish the same without issuing any notice;

- (v) On the prayer made by the learned counsel appearing for the petitioners, we permit the deletion of the names of the petitioner Nos.82 and 83 and therefore, this Petition as far as the said petitioners are concerned, stands dismissed;
- (vi) The petitioner Nos.1 to 5, 7, 8, 11, 13, 14, 16 to 20, 22, 23, 25, 28 to 30, 32 to 35, 37, 40 to 42, 79, 80 and 84 have preferred Appeals against the orders holding them as ineligible for grant of alternate accommodation. We direct the Appellate Authority of the Mumbai Municipal Corporation to decide the said Appeals as expeditiously as possible and in any event within a period of three months from today;
- (vii) If the said petitioners or any of them are held to be eligible, orders passed on the Appeals alongwith the letter of offer of alternate accommodation shall be issued to them by the Mumbai Municipal Corporation. Time of three weeks shall

be granted to the said petitioners to occupy the alternate accommodation. If the Appeals are decided against the petitioners, orders of eviction shall not be implemented for a period of three weeks from the date on which the orders are served to the respective petitioners.

- (ix) As regards the petitioner Nos.6, 9, 10, 12, 15, 21, 24, 26, 27, 31, 36, 38, 39, 43 to 78 and 81, they are held to be ineligible and they have not preferred any Appeals. No relief can be granted to the said petitioners and this Petition as far as the said petitioners are concerned, stands dismissed.

(PN. DESHMUKH, J)

(A.S. OKA, J)