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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.3032 OF 2017**

VN. Agarwal Developers and Ors.	... Petitioners
Vs.	
The State of Maharashtra, Ministry of Urban Development and Ors.	... Respondents

Ms. Gayatri Singh, Senior Counsel i/by Legal Liasions for the Petitioners.

Mr. Kedar Dighe, AGP for the Respondent - State.

Ms. Sheetal Mone for the Mumbai Municipal Corporation.

**CORAM : A.S. OKA &
PN. DESHMUKH, JJ.**

DATE : 25th JANUARY, 2018

PC.

1 On 21st December, 2017 the parties were put to notice that an endeavour shall be made to decide the Petition finally at the stage of admission. Rule. Respondents waive service. We have heard the learned senior counsel appearing for the petitioners, the learned AGP for the first respondent and the learned counsel appearing for the second and third respondents.

2 On 13th April, 2017 the first petitioner who is the Partnership Firm of which the second to fourth petitioners are claiming

to be the Partners, was served with a notice by the Assistant Engineer of H/East ward of the Mumbai Municipal Corporation in which it was stated that the said Assistant Engineer has been conferred with powers under Section 314 of the Mumbai Municipal Corporation Act, 1888 (for short “the said Act”). In the notice, it was stated that the structure in possession of the petitioners is falling within the distance of 10 meters from Tansa Pipeline and therefore, as per the directions of this Court in PIL No.140 of 2006, the said structure is required to be demolished. The first petitioner was called upon to submit the documents to decide the eligibility for rehabilitation.

3 A reply was sent by the first petitioner on 22nd May, 2017 to the notice dated 13th April, 2017. In the said reply, the first petitioner stated that the notice was delivered on 15th May, 2017. In the reply, it was contended that the first petitioner has erected a new building on a plot bearing CTS No.166A, Village Bandra (E), Taluka – Andheri comprising of two wings consisting of ground + 3 upper floors and ground + 6 upper floors respectively. It is contended that the building has been constructed as per the last amended approved plan dated 26th December, 2013. It is contended that the first petitioner has paid huge amount by way of development charges. It was contended that there is a 14-15 meter road between the plot on which the building has been

constructed and the Tansa Pipeline. Various document such as copies of IOD, Commencement Certificate, receipts of payment of development charges, sketch plan, photocopy of the extract of proposed Development Plan 2034 were furnished along with the reply. By a further communication dated 26th October, 2017 the Assistant Engineer informed the first petitioner that after perusing the documents submitted it was found that the petitioner was not eligible for grant of alternate accommodation in terms of the Government decision dated 16th May, 2015. Therefore, the petitioners were called upon to vacate the structures. The challenge in this Petition is to the notices/communications dated 13th April, 2017 and 26th October, 2017.

4 Though a notice was issued on 9th November, 2016 none of the respondents filed their reply. The learned Senior Counsel appearing for the petitioners submitted that the building constructed by the petitioners is in terms of the development permission and in any event, it is not falling within the distance of 10 meters from Tansa Pipeline. Her submission that due process of law has not been followed and the documents furnished by the petitioners have been ignored.

5 The learned counsel appearing for the second and third respondents submitted that action of demolition is required to be taken

in terms of the directions issued by this Court in PIL No.140 of 2006 and therefore, no interference is called for.

6 We have given careful consideration to the submissions. We have already referred to notice dated 13th April, 2017 served to the first petitioner by the Municipal Corporation. The notice was served on 15th May, 2017 which was replied on 22nd May, 2017. Two main contentions raised in the reply are :-

- A] The distance between the boundary of the plot of land bearing CTS No.166A and Tansa Pipeline is 14-15 meters; and
- B] The petitioners have constructed building consisting of two wings on the basis of IOD and Commencement Certificate granted by the Municipal Corporation.

7 In the second impugned letter dated 26th October, 2017 the Assistant Engineer has merely mentioned that after considering the documents submitted by the petitioners, it was found that they were not eligible for alternate accommodation in terms of the Government Resolution dated 16th May, 2015. It appears that the Assistant Engineer has not at all applied his mind to the aforesaid two specific contentions raised in the reply based on the documents produced such as a copy of commencement certificate dated 31st August, 1996 which was validated till 26th May, 2014, a copy of the approved plan, a copy of IOD, etc.

8 The second impugned letter dated 26th October, 2017 proceeds on the footing that the first impugned notice dated 13th April, 2017 is a notice under Section 314 of the said Act.

9 Considering the aforesaid two contentions, which in the facts of the case go to the root of the matter, some investigation and inquiry by the second and third respondents was necessary. We, therefore, propose to direct the Municipal Corporation to carry out measurement for deciding whether construction made by the petitioners is within the distance of 10 meters from Tansa Pipeline. If no part of the construction made by the petitioners is found to be within the distance of 10 meters, obviously there will not be any occasion for taking action on the basis of the directions issued in PIL No.140 of 2006.

10 If it is found that the construction or a part thereof is within the distance of 10 meters, considering the large number of documents produced by the petitioners including copies of the sanctioned plan, IOD, completion certificate, documents showing title, after considering the documents produced by the petitioners, the Assistant Engineer or authorised officer will have to pass appropriate

order as the second impugned letter dated 26th October, 2017 shows non-application of mind.

11 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 12th February, 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 construction of the petitioners falls within the distance of 10 meters from Tansa Pipeline, action of demolition of the construction 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 construction of the petitioners or part thereof falls 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 documents submitted by the petitioners along with the reply dated 22nd May, 2017 and after considering the contents of the reply and documents to pass a reasoned order;

(iv) The reasoned order shall be communicated to the first petitioner. Till the date of communication of the order, action of demolition shall not be taken in respect of the construction subject matter of this Petition on the basis of the directions issued in PIL No.140 of 2006. If the order 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 order is served to the first petitioner;

(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)