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

WRIT PETITION (L) No. 3050 OF 2017

Shabbir Khan Mohommed & Anr. ... Petitioners
Vs.
State of Maharashtra & Anr. ... Respondents

Mr. Tushar Kochale a/w Dr. A. D. Jankar, V. P. Sangvikar, for the
Petitioners.

Mr. V. S. Upadhyay, AGP for the Respondent No. 1 – State.

Ms. Kejali Mastakar, for the Respondent – BMC.

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

DATE : JANUARY 19, 2018

PC :

1. Heard the learned counsel for the Petitioners and the
learned counsel for the Respondent No. 1 - State. Rule. Learned
advocate Ms. Kejali Matarakar waives service of notice for the
Respondent Nos. 2 and 3.

2. As per the directions issued in PIL No. 140/2006, the
Mumbai Municipal Corporation has been directed to demolish the

structures standing within the distance of 10 meters on both sides of the Tansa pipeline. On the footing that the structures subject matter of this petition are within a distance of 10 meter from Tansa pipeline, notices of eviction have been issued to the Petitioners. The challenge is to the said action.

3. The first contention of the learned counsel for the Petitioners is that the structures of the Petitioners are being used for commercial purposes and the same are not within the distance of 10 meters from the Tansa pipeline. The second contention without prejudice to first contention is that though the Petitioners are held to eligible for rehabilitation, they have not been informed about the manner in which the Petitioners will be rehabilitated. He submitted that in any case even assuming that the structures are within the distance of 10 meters, the Petitioners cannot be dispossessed without offering them alternate accommodation. The submission of the learned counsel for the Respondent Nos. 2 and 3 is that measurements were carried out and after verifying that the structures are within the distance of 10 meters, the notices have been issued. However, on instructions of Mr. Ashesh K. Bhoir, Assistant Engineer (Maintenance)

H / East Ward, she states that considering the peculiar facts of the case, if the Court directs, a demarcation will be made by the Municipal Corporation after giving notices to the Petitioners. On instructions, she states that the Petitioners have been held to be eligible for rehabilitation. She submits that if commercial premises are available, the same will be allotted to the Petitioners. In case the commercial premises are not available, monetary compensation will be offered to the Petitioners. We accept the statements made on instructions.

3. Considering the aforesaid submissions and the statement made by the learned counsel for the Respondent Nos. 2 and 3, writ petition is disposed of by passing the following order:

- (i) We direct the Petitioners to remain present at the site of their structures on 3rd February, 2018 at 11.00 a.m. when the appropriate officer of the Municipal Corporation shall remain present. In presence of the petitioners, the said appropriate officer shall measure the distance of the structures of the Petitioners from Tansa pipeline. After measuring the distance, a

sketch and a panchanama shall be drawn, which shall be signed by the Petitioners and the appropriate officer of the Municipal Corporation. Copies of the panchanama and the sketch shall be provided the Petitioners immediately;

- (ii) If the entire structures of the Petitioners are found to be beyond the distance of 10 meters from Tansa pipeline, their structures shall not be demolished on the basis of impugned notices. If the only part of the structures are found to be within the distance of 10 meters, only those parts shall be liable for demolition and not the parts which are beyond the distance of 10 meters;
- (iii) In the event, if it is found that the entire structures or part thereof are found to be within the distance of 10 meters from Tansa pipeline, then within a period of six weeks from 3rd February, 2018, the Municipal Corporation shall offer package of rehabilitation to the Petitioners in writing. Time of two weeks shall

be granted to the Petitioners for shifting, from the date on which rehabilitation package is offered to the Petitioners and the subject structures shall not be demolished for the said period of two weeks. It is obvious that action of demolition shall not be taken within the said period of two weeks;

- (iv) We make it clear that we have not made adjudication on the issue of distance of subject structures from Tansa pipeline. We also make it clear that we have not made adjudication as to the nature of rehabilitation package, which will be offered to the Petitioners by the Municipal Corporation;
- (v) Rule is accordingly partly made absolute in the aforesaid terms.
- (vi) All concerned to act on an authenticated copy of this order.

Sd/-
[P. N. DESHMUKH, J.]

Sd/-
[A. S. OKA, J.]