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

WRIT PETITION (L) No. 3053 OF 2017

Firoz Khan Shabbir Khan	...	Petitioners
Vs.		
State of Maharashtra & Ors.	...	Respondents

Mr. Tushar Kochale, V. P. Sangvikar, A. D. Jamdar, for the Petitioners.

Mr. Sukanta Karkamar, AGP for the Respondent No. 1 – State.

Ms. Vandana Mahadik, for the Respondent Nos. 2 and 3 - BMC.

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

DATE : JANUARY 19, 2018

PC :

1. Rule. The learned AGP waives service of notice for the first Respondent State. The learned advocate Ms. Vandana Mahadik waives service of notice for the second and third Respondents.

Forthwith taken up for final disposal

2. The challenge in this petition under Article 226 of the Constitution of India is to the impugned notice dated 26th October,

2017. As per the directions issued by a Division of this Court in PIL No. 140 of 2006, the structures falling within a distance of 10 meter on both sides of Tansa pipeline are required to be demolished. In the present case, the Petitioners are using the subject structures for the commercial purposes. By the impugned notice, the Petitioners were informed that they are ineligible for grant of an alternate accommodation and therefore, the Petitioners were informed that on the failure to remove their structures within two days, action of demolition will be taken.

3. It is not in dispute that appeals preferred by the Petitioners on the issue of eligibility are pending before the appellate authority, constituted by the Municipal Corporation. On instructions of Mr. Ashesh K. Bhoir, Assistant Engineer (Maintenance) H / East Ward, the learned counsel for the Municipal Corporation states that the said appeals, which are pending, will be decided within a period of 8 weeks from today.

4. On instructions, she makes a further statement that as the contention of the Petitioners is that their structures are not situated within a distance of 10 meters, if the Court directs, the concerned

Officer of the Municipal Corporation will carry out measurements in presence of the Petitioners. Considering the above statements, the petition need not be kept pending and the same is disposed by passing the following order:

- (i) We direct the Petitioners to remain present at the site of their structures on Saturday 17th February, 2018 at 11.00 a.m. when the appropriate officer of the Municipal Corporation shall carry out the measurements for ascertaining whether the subject structures are within a distance of 10 meters from Tansa pipeline. A sketch and a panchanama of measurement shall be drawn after taking measurement, which shall be signed by the Petitioners and the concerned officer of the Municipal Corporation;
- (ii) In the event, the structures of the Petitioners are not found within a distance of 10 meters from Tansa pipeline, action of demolition shall not be taken on the basis of the impugned notice;

- (iii) In the event, only part of the structures are found to be within a distance of 10 meters, action of demolition can be taken only in respect of that part, which is found to be within a distance of 10 meters from Tansa pipeline;
- (iv) We direct the Municipal Corporation to decide the appeals preferred by the Petitioners within a period of eight weeks from today. The decisions on the appeals shall be communicated to the Petitioners within a period of ten weeks from today;
- (v) If the Petitioners are held to be eligible, within six weeks from the date of decision of the appeals, the Respondent Municipal Corporation shall offer package of rehabilitation to the Petitioners. In such event, action of demolition of the structures shall not be taken for a period of two weeks from the date on which the rehabilitation package is offered in writing to the Petitioners;

- (vi) If the Petitioners are held to be ineligible for rehabilitation, action of demolition shall not be taken for a period of two weeks from the date of order on which orders of the appellate authority are communicated to the Petitioners;
- (vii) The issue of eligibility of the Petitioners for rehabilitation is kept open, which shall be decided by the appellate authority;
- (viii) Rule is made partly absolute in the aforesaid terms;
- (ix) All concerned to act on an authenticated copy of this order.

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

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