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

WRIT PETITION (L) NO. 3171 OF 2017

WITH

WRIT PETITION NO. 3173 OF 2017

Murlidhar Munnalal Nigam ... Petitioner

Versus

State of Maharashtra ... Respondent

WRIT PETITION (L) NO. 3172 OF 2017

Mohd. Ismail Ebrahim Shaikh ... Petitioner

Versus

State of Maharashtra ... Respondent

WRIT PETITION (L) NO. 3174 OF 2017

Harsha Rajesh Malade & Anr. ... Petitioners

Versus

State of Maharashtra ... Respondent

WRIT PETITION (L) NO. 3176 OF 2017

WITH

WRIT PETITION (L) NO. 3177 OF 2017

Mohd. Nasim Kazi ... Petitioner

Versus

State of Maharashtra _____ ... Respondent

Mr. Tushar Kochale a/w. Mr. Vinod P. Sangvikar, for the Petitioner
in all the matters.

Ms. K.H. Mastakar and Ms. Vandana Mahadik for Respondent –
BMC.

Mr. Amit Shastri, AGP for the Respondent – State in WPL No.
3171 of 2017.

Mr. R.J. Mane, AGP for Respondent – State in WPL No. 3172 of
2017.

Mr. Milind More, Addl. G.P. for Respondent – State in WPL No.
3173 and 3176 of 2017.

Mr. L.T. Satelkar, AGP for Respondent – State in WPL No. 3177 of
2018.

**CORAM: A.S. OKA AND
RIYAZ I. CHAGLA, JJ.**
DATE: 20TH JULY, 2018.

PC:-

1. Heard the learned counsel appearing for the Petitioner, the learned counsel appearing for the Respondent Nos. 2 and 3 and the learned Assistant Govt. Pleader for the Respondent No.1. Considering controversy involved in the Petitions, the same are immediately taken up for final disposal.

2. The facts of these Petitions are more or less similar. Therefore, we are referring to facts of the case in Writ Petition (L) No. 3171 of 2017. The structure of the Petitioner subject matter of the Petitions has been demolished for implementing the directions issued by this Court in PIL No. 140 of 2006. The subject structure has been demolished on the footing that the same was within the distance of 10 Mtrs. from a main pipeline supplying water to the City of Mumbai. It appears from the averments made in the Petition and the documents annexed that the case of the Petitioner is that he was carrying on business in the subject structure since prior to 1st January, 1989. It is claimed that the structure was on a private property bearing CTS No. 588 - 589 of village Kole-Kalyan, Taluka – Bandra, Mumbai suburban District. The Petitioner is relying upon property register card of both the

CTS numbers showing that a private person is shown as a holder. It is pointed out in the Petition that in the year 2011-12, a notice of demolition was issued to the Petitioner for which reply was submitted by the Petitioner along with the documents. Another notice was served on 1st August, 2015 (Exhibit 'B' to the Petition) to which a reply was sent on 6th August, 2015 to the Mumbai Municipal Corporation through an Advocate. It is claimed in the Petition by relying upon a copy of the registration document annexed to the Petition that the Petitioner along with other occupants had purchased structures on the private property from one Shri K.M. Kulkarni who shown as the holder in CTS survey record. It is further claimed in the Petition that those occupants of structures have formed a Co-Operative Society which is duly registered under the Maharashtra Co-Operative Societies Act, 1960. In reply issued by an Advocate on behalf of the said Society, a specific case has been made out that said structure is on a private property by giving CTS numbers and by stating the name of the holders. It is further contended that the structure is not within the distance of 10 Mtrs. of the main pipeline. Various other documents are relied upon to show that the structure is very old including copies of the agreements and sale deed. It appears that on 31st October, 2017, the Petitioner was informed that he is

ineligible for rehabilitation and therefore within two days the structure should be removed by him. The facts of the other Petitions are more or less similar.

3. Various reliefs have been prayed in these Petitions such as a direction to reconstruct the demolished structure, a direction to pay compensation in accordance with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 as well as payment of monetary compensation. From 27th April, 2018 time is being repeatedly granted to the Mumbai Municipal Corporation. In fact the order dated 8th June, 2018 notes the statement made by the learned counsel appearing for the Petitioners. The said order reads thus:-

“1. The learned counsel appearing for the petitioners on instructions states that if proper rehabilitation package is offered by the Municipal Corporation to the petitioners, they will be willing to accept the same. We direct the learned counsel appearing for the Municipal Corporation to take instructions on the issue of eligibility of the petitioners. Necessary statement shall be made on the next date. Place the Petition high upon board on 22nd June, 2018”.

4. Even thereafter, the Petition appeared on 22nd June, 2018 and 6th July, 2018. On 6th July, 2018, the following was the order passed :-

“1. We direct the Municipal Corporation to consider whether the Corporation is in position to offer permanent alternate accommodation to the Petitioners in these Petitions. Specific statement to that effect shall be made on the next date which is 20th July, 2018. To be listed high upon board.”

5. Thus the Petitioners are willing to accept a proper rehabilitation package if offered by the Brihan-Mumbai Municipal Corporation (MMC). However, MMC is not able to take any decision. There is no reply filed. We, therefore, propose to direct MMC to take into consideration the case made out by the Petitioners and in particular the case that the subject structures were not situated within the distance of 10 Mtrs. from the main pipeline and that structures were on a private property and take a decision about offering appropriate rehabilitation package to the Petitioner. While we propose to issue such directions, we also propose to grant liberty to the Petitioners to file fresh Petitions claiming the same reliefs which are claimed in these Petitions, if proper rehabilitation package is not offered to them.

6. Accordingly, we dispose of the Petition by passing the following order:-

(i) We direct the Respondent Nos. 2 and 3 to consider the case of the Petitioners on the basis of contentions raised in the Petitions

and the documents annexed to the Petition and to take a decision on offering a proper rehabilitation package to the Petitioners. Such decision shall be taken within six weeks from the date on which this order and judgment is uploaded;

(ii) We make it clear that on the failure of the said Respondent to take appropriate decision or on their failure to offer proper rehabilitation package to the Petitioners, it will be open for the Petitioners to file fresh Petitions claiming the reliefs which are claimed in these Writ Petitions;

(iii) The Writ Petitions are disposed of on above terms.

(iv) All concerned to act on an authenticated copy of this order and judgment.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)