

Devrajan Shambhu & Ors.

...Petitioners

Versus

Slum Rehabilitation Authority & Ors.

...Respondents

Mr. Nitin Dalvi, for the Petitioners in all WPs.

Mr. A.P. Kulkarni, for the Respondent No. 1 in all WPs.

Ms. Pallavi Thakar, for the Respondent-BMC in all WPs.

Mr. U.S. Upadhyay, AGP, for the Respondent-State in WP/3187/17.

**CORAM : ABHAY S. OKA AND
RIYAZ I. CHAGLA, JJ.**

DATE : 9 March 2018

ORDER :

1. Heard. The learned Counsel for the parties.
2. Notice of final disposal has already been issued.
3. We have perused additional Affidavits filed by the Petitioners. To the additional Affidavits, the Petitioners have

annexed photocopies of the property register cards for showing that the subject structures have been constructed on a privately owned land.

4. Though it is not possible for the writ Court to record a finding on the issue of title, we find that the documents annexed to the additional Affidavits *prima facie* show that the structures are not situated on a public property. There is nothing placed on record to show that the structures are situated either on the property vested in the State Government or the Municipal Corporation. Therefore, these Petitions will be governed by the order dated 1 March 2018 in ***Navinchandra Shyamji Chhavda & Ors. Vs. State of Maharashtra & Ors.***¹

5. We may note here that the learned Counsel for the Petitioners stated that the basic contention of the Petitioners is that their structures being situated on a private property cannot be demolished without following due process of law and the land below the structures cannot be taken over without

¹ *Writ Petition 454 of 2016*

following due process of law. The learned Counsel for the Petitioners states that the Petitioners are not questioning the correctness of the orders passed in Public Interest Litigation No. 140 of 2006. However, his contention is that the orders passed in the said Public Interest Litigation require that due process of law should be followed before demolishing the structures.

6. For the reasons recorded in the judgment and order dated 1 March 2018 in Writ Petition No. 454 of 2016, we pass the following order:-

- (i) We hold that in the facts of the case, the action of demolition proposed to be taken on the basis of the impugned notices will not amount to following due process of law;
- (ii) We, therefore, direct the Respondents that the structures of the Petitioners subject matter of these Petitions shall not be demolished without

following due process of law, as indicated in the reasons recorded in the judgment and order dated 1 March 2018 in Writ Petition No. 454 of 2016;

- (iii) We make it clear that we have not made final adjudication on the question whether the structures subject matter of these Petitions are on privately owned lands and whether the structures are lawful or not. All these issues will have to be decided when due process of law is adopted by the Respondents or one of them;
- (iv) Rule made absolute in the aforesaid terms;
- (v) All concerned to act on an authenticated copy of the judgment and order.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]