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

WRIT PETITION (L) No. 3242 OF 2017

Dinesh N. Puthran & Ors. ... Petitioners
Vs.
Municipal Corporation of Gr. Mumbai & Ors. ... Respondents

WTH
WRIT PETITION (L) No. 3249 OF 2017

Amit Murlidhar Sawant & Ors. ... Petitioners
Vs.
Municipal Corporation of Gr. Mumbai & Ors. ... Respondents

Mr. P. J. Thorat, for the Petitioners in WPL. 3242/2017.

Mr. Vasim Siddiqui i/b Akshay Pawar, for the Petitioners in WPL.
3249/2017.

Ms. S. B. Gore, AGP for the Respondent – State.

Ms. Shital Mane, for the Respondent – BMC.

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

DATE : FEBRUARY 6, 2018

PC :

1. By order dated 12th December, 2012 parties were put to
notice that the petition will be taken up for final disposal at the

admission stage. As per the directions issued by this Court in PIL No. 140 of 2006, the Municipal Corporation and the State Government have been directed to remove the structures falling within the distance of 10 meters on both sides of the Tansa pipeline. In the present case, the action of demolition against the Petitioners is sought to be challenged on the ground that their structures are not falling within the distance of 10 meters from the pipeline. There are other challenges in both the petitions, such as the failure of the Municipal Corporation to follow due process of law as the structures are on the private properties.

2. If the contention of the Petitioners that their structures are not situated within the distance of 10 meters from Tansa pipeline is correct, there cannot be any action of demolition of their structures by the Corporation only on the basis of the orders passed in PIL No. 140 of 2006. Therefore, both the petitions need not be kept pending and we dispose of these petitions by passing the following order:

- (i) We direct the representatives of the Petitioners and appropriate officer of the Mumbai Municipal Corporation to remain present at the site of the

structures on 16th February, 2018 at 11.00 a.m. The measurements shall be carried out by the officers of the Municipal Corporation in presence of the representatives of the Petitioners for ascertaining whether structures of the Petitioners are within the distance of 10 meters on either side of the Tansa pipeline. The exercise of taking measurement shall be commenced on 16th February, 2018 and shall be completed within a period of one week from that date. A sketch and the panchanama of the said measurements shall be drawn and copies thereof shall be furnished to the representatives of the Petitioners;

- (ii) If on taking measurements it is found that structures of the Petitioners are not situated within the distance of 10 meters from either side of the Tansa pipeline, their structures shall not be demolished only on the basis of the impugned notices / orders;
- (iii) If the structures of the Petitioners or some part thereof are within the distance of 10 meters from Tansa

pipeline, the Municipal Corporation shall issue intimation in writing in that behalf to the concerned Petitioners within a period of three weeks from the date on which measurements are completed;

- (iv) Action of demolition shall not commenced for a period of three weeks from the date of service of intimation as aforesaid to enable the Petitioners to file fresh petitions challenging the measurements;
- (v) All contentions of the parties on merits are kept open.

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

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

Vinayak Halemath