

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

WRIT PETITION (LDG.) NO. 3260 OF 2017

Ramesh Piranlal Bageria and others. ... Petitioners.

V/s.

Assistant Engineer,

Assistant Municipal Commissioners Office,

Brihan Mumbai Mahanagar Palika and others. ... Respondents.

Mr.Sangram Chinappa i/b. Mr.Kranti L.C. for the petitioners.

Ms.Pallavi Thakar for the respondent- MMC.

CORAM : A.S.OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 1st March 2018.

PC.:

Heard the learned counsel appearing for the parties. It appears to us that this petition will be covered by the judgment and order delivered by us in Writ Petition No.454/2016.

2. In this petition, the notices impugned show that the Mumbai Municipal Corporation wants to demolish the subject structures in implementation of the directions issued in PIL No.140/2006. In the present case, the petitioners are relying upon the property register card (Exh.E) showing that their father Piranlal was the holder of land bearing CTS No.363 at Bandra (East) in Mumbai Suburban District. According to the case of the petitioners, the subject structures are situated on the land

bearing CTS No.363 corresponding to Survey No.163 Hissa No.1A of village Bandra. The structures subject matter of this petition are situated on the land bearing CTS No.363 of Bandra (East). *Prima facie*, it appears to us that the said land is privately owned and, in any case, the same does not appear to be vesting either in the State Government or any other public authority.

Therefore, for the reasons recorded in the judgment and order dated 1st March 2018 in Writ Petition No.454/2016, we pass the following order:

- (i) We hold that in the facts of the case and for the reasons set out in the judgment and order dated 1st March 2018 delivered in Writ Petition No.454/2016, the action of demolition proposed to be taken on the basis of 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 this petition shall not be demolished without following due process of law as indicated in the aforesaid judgment and order in Writ Petition No.454/2016;
- (iii) We make it clear that we have not made final adjudication on the question whether the structures subject matter of this petition are protected even though the same have been constructed without obtaining development permission. We have also not made final adjudication on the

question whether the lands below the structures of the petitioners are privately owned. All these issues will have to be decided when due process of law is adopted by the respondents or any one of them;

(iv) Rule is, therefore, made absolute on the above terms.

(v) All concerned to act on an authenticated copy of this order.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)