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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.3300 OF 2017**

Nitin Janardhan Gaukar and Ors.

... Petitioners

Vs.

Assistant Engineer,
Assistant Municipal Commissioners Office,
Mumbai & Ors.

... Respondents

Ms. Ronita Bhattacharya i/by Mr. Kranti L.C. for the Petitioners.

Ms. Pallavi Thakar for the Respondent Nos.1 to 3.

Mr. U.S. Upadhyay, AGP for Respondent Nos.4 and 6.

Mr. Abhijit P. Kulkarni for Respondent No.5.

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

DATE : 25th JANUARY, 2018

PC.

1 Heard the learned counsel appearing for the petitioners, the learned counsel appearing for the first to third respondents, the learned counsel appearing for the fifth respondent and the learned AGP for the fourth and sixth respondents. Considering the narrow controversy involved in the Petition, the same is forthwith taken up for final disposal. Accordingly, we issue Rule. The respondents waive service.

2 The petitioners are claiming to be the occupants of hutments on the land more particularly described in paragraph 1 of the Petition. It is pointed out that notices were issued by the third respondent and the Municipal Corporation to the petitioners informing them that their structures are required to be demolished for implementing the directions of this Court in PIL No.140 of 2006. In this PIL, for ensuring safety of the citizens of Mumbai, a Division Bench directed demolition of structures within the distance of 10 meters of Tansa Pipeline which supplies water to major part of the city.

3 The petitioners were called upon to submit documents for deciding the issue of eligibility for grant of alternate accommodation. The petitioners submitted the documents. All the petitioners were held to be ineligible and notices were issued to them directing demolition of their structures. There are various contentions raised by the learned counsel appearing for the petitioners. One of the factual contentions is that the petitioners have already preferred Appeals before the third respondent – Municipal Corporation for challenging the decisions holding them ineligible for allotment of alternate accommodation. It is contended that even if the petitioners are held eligible, they will be offered alternate accommodation at Mahul near Chembur. Various issues concerning the premises at Mahul offered to similarly situated

persons have been raised including the issue of inconvenience which may be caused to the petitioners. It is contended that eligibility criteria as specified in G.R. dated 16th May, 2016 will have to be considered.

4 The learned counsel appearing for the petitioners on instructions reiterated that all the petitioners have preferred Appeals which are pending before the third respondent – Municipal Corporation. She states that by way of illustration, Appeals preferred by the two petitioners have been annexed as Exhibit – H. The learned counsel appearing for the first to third respondents have no instructions regarding pendency and outcome of the Appeals preferred by the petitioners.

5 It is obvious that so long as the issue of eligibility of the petitioners for grant of alternate accommodation is not decided in the Appeals, the petitioners cannot be evicted. The remedy of preferring Appeals has been created by the third respondent – Corporation itself.

6 At this stage, it is not necessary for us to go into the question in what manner the petitioners can be rehabilitated if they are held to be ineligible. Whether the premises offered at Mahul to similarly situated petitioners are suitable or not is the issue which need not be

gone into at this stage as far as the petitioners are concerned.

7 We, therefore, dispose of this Petition by passing the following order :-

ORDER

- (i) We accept the statement made by the learned counsel appearing for the petitioners that all the petitioners have preferred Appeals in prescribed format to the third respondent – Municipal Corporation on the issue of eligibility;
- (ii) We direct the appropriate authority of the third respondent- Municipal Corporation to dispose of the said Appeals as expeditiously as possible and in any event within a period of three months from the date on which this order is uploaded;
- (iii) The decision taken on the Appeals shall be communicated to the petitioners. Till the date of communication of the orders passed in Appeals, the action of demolition of structures of the concerned Petitioners should not be taken. If the petitioners are held to be eligible for rehabilitation, along with the

decision of the appellate authority, the Municipal Corporation shall communicate the petitioners about the manner in which they propose to rehabilitate the petitioners. In such event, action of demolition shall not be taken in respect of the subject structures of the petitioners for a period of three weeks from the date of service of communication as aforesaid ;

- (iv) If the Appeals are dismissed, action of demolition of the subject structure of the petitioners shall not be taken for a period of three weeks from the date on which the orders of the appellate authority are communicated to the respective petitioners;
- (v) We make it clear that if the petitioners are aggrieved by the manner in which they are sought to be rehabilitated or if the petitioners are aggrieved by adverse orders in Appeals, they will be free to file appropriate proceedings in accordance with law;
- (vi) Rule is made partly absolute on above terms.

(PN. DESHMUKH, J)

(A.S. OKA, J)