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

WRIT PETITION NO. 979 OF 2018

Mohammed Ismail Sayyed … Petitioner
Versus
The Municipal Corporation of Greater Mumbai … Respondents
and Ors.

Mrs. Vrushali U. Kabare, for the Petitioner.
Ms. K.H. Mastakar, for the Respondent – MMC.

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

PC:-

1. On 12th December, 2017, notice for final disposal was issued. Though the Petition was disposed of by the order dated 1st March, 2018, the said order was recalled by the order dated 11th April, 2018, on the ground that some of the city survey numbers were not referred in the judgment.

2. The case made out in the Petition is that the structures which are the subject matter of notice dated 24th November, 2017 are on a private property. In fact, it is not the notice addressed to the Petitioner but it is a general notice displayed in the locality. This is not a case where a notice under Section 314 of the Mumbai Municipal Corporation Act, 1888 was issued to the Petitioner.

3. On 11th June, 2018, 2nd July, 2018 and 13th July, 2018

time was granted to the learned counsel appearing for the Mumbai Municipal Corporation ("MMC") to go through the documents which are annexed from pages 33 to 35 NNNN. The averments made in the Petition have not been contested by the MMC by filing any reply, though notice for final disposal was issued on 12th December, 2017. The documents annexed to the Petition show that there is a substance in the contention raised by the Petitioner that the structures subject matter which are required to be demolished on the basis of the order passed in PIL No. 140 of 2006 are on a private property. No document is placed on record to show that the structures are situated either on the property vesting in the State or property vesting in any public authority. Moreover, no material is placed on record to show that the structures subject matter of this Petition are within the distance of 10 Mtrs. of main water pipeline. Therefore, this case will be governed by the judgment and order passed on 1st March, 2018 in Writ Petition No. 454 of 2016 in (***Navinchandra Shyamji Chhadva & Ors. Vs. State of Maharashtra and Ors***.).

4. Accordingly, the Petition deserves to be disposed of in terms of the said judgment and order. Accordingly 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, the action of demolition proposed to be taken on the basis of notice 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 judgment and order dated 1st March, 2018;

(iii) We make it clear that we have not made final adjudication on the question whether the structures subject matter of this petition can be 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 judgment and order.

(RIYAZ I. CHAGLA J.) **(A.S. OKA, J)**