

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

WRIT PETITION (LDG.) NO. 3325 OF 2017

Shaikh Siddiqui Yusuf and others.	...	Petitioners..
V/s.		
Municipal Corporation of Greater Mumbai and another.	...	Respondents.

Mr.VT.Dubey for the petitioners.

Ms.Vandana Mahadik for the respondent- MMC.

Ms.Jyoti Chavan, AGP for respondent No.2.

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

DATE : 6th April 2018.

PC.:

Heard the learned counsel for the petitioners, the learned counsel appearing for the first respondent and the learned AGP for the second respondent. The first paragraph of the order dated 29th November 2017 reads thus:

“The learned counsel for the petitioners states that though by the order in Public Interest Litigation No.140/2006, this Court had permitted the Corporation to remove only the structures which are located within 10 metres from the Tansa water pipelines, the structure of the petitioners are sought to be demolished by the respondent- Corporation though they are situated at a distance of more than 30 feet from the pipelines. A fair statement is made by the learned counsel for the

petitioner that if on an enquiry it is found that the structures of the petitioners fall within 30 feet from the pipelines, the petitioner would vacate the structures.”

2. Thereafter, on the request made by the learned counsel appearing for the petitioners, we permitted the petitioners to amend the petition to incorporate the ground that the structures are on private property. When the amendment was permitted, our attention was not invited to the order dated 29th November 2017. The statement made on behalf of the petitioners which was recorded in the said order is in the form of an undertaking and the petitioners are bound by the same.

3. By filing a rejoinder, the petitioners are disputing the measurements carried out by the officer of the first respondent which are placed on record along with an affidavit. The order passed by this Court in PIL No.140/2006 will apply to the structures where the main water pipeline is above the ground or under the ground. Now the only dispute which remains is whether the structures of the petitioners are within the distance of 10 meters from the main pipeline supplying water to the city of Mumbai. If the structures are found within the distance of 10 meters, as per the undertaking of the petitioners recorded on 29th November 2017, the same will have to be demolished.

4. As some dispute is raised about measurements taken by the first respondent, considering the fact that the structures of the petitioners are residential structures, we propose to direct an Officer from the Survey Department of the State Government to carry out measurements after

notice to the petitioners and the first respondent. We make it clear that in view of the undertaking of the petitioners recorded in the order dated 29th November 2017, no other contention remains open to the petitioners.

5. Accordingly, we dispose of the petition by passing the following order:

(i) We direct the City Survey Officer having jurisdiction over the subject area to visit the site after an advance notice to the petitioners and the Designated Officer of the concerned Ward of the first respondent. The City Survey Officer shall measure the distance between the structures subject matter of this petition from the main water pipeline supplying water to the city. The measurements shall be carried out to decide whether the structures of the petitioners or any part thereof comes within the distance of 10 meters from the main water pipeline.

(ii) This exercise shall be completed within one month from the date on which this order is uploaded. The City Survey Officer shall provide measurement map and other details to the concerned Designated Officer of the first respondent. On the basis of the said map and other particulars supplied by the City Survey Officer, the Designated Officer of the concerned Ward or any other officer nominated by the first respondent shall serve a notice

to the petitioners whose structures are found to be within the distance of 10 meters. Along with notice, the Officer of the Municipal Corporation shall serve the said petitioners copies of the measurement map and other documents supplied by the City Survey Officer to the first respondent.

(iii) Needless to add that if the structures of some of the petitioners or part thereof are found beyond the distance of 10 meters from the main water pipeline, the said structures or part thereof which are beyond the distance of 10 meters cannot be demolished.

(iv) Time of three weeks shall be available to the petitioners from the date of service of such notice to remove their structures or part thereof which are within the distance of 10 meters from the pipeline. If within the stipulated period of three weeks, the petitioners or such petitioner who do not comply with their statement recorded in the order dated 29th November 2017, the Municipal Corporation shall proceed to demolish the structures or part thereof which are affected;

(v) The Designated Officer shall immediately supply copy of this order as well as all the particulars of the petitioners and their structures to the City Survey Officer having jurisdiction over the subject area;

(vi) The petition is disposed of on the above terms.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)