

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

WRIT PETITION (LDG.) NO. 3494 OF 2017

Sanjay Ghanshyamdas Nihlani and others. ... Petitioners.

V/s.

The Municipal Corporation of Greater Mumbai
and others. ... Respondents.

Mr.Vineet Sukumaran with Mr.A.PKhanduri for the petitioners.

Ms.Vandana Mahadik for respondent No.1.

Mr.Abhijeet Desai for respondent No.2.

Mr.Hemant Haryan, AGP for respondent No.3.

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

DATE : 6th April 2018.

JUDGMENT : (Per A.S.Oka, J.)

Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents. Notice of final disposal was issued on 23rd February 2018. The petitioners have challenged in this petition the notices issued by the first respondent-Municipal Corporation purporting to be notices under section 314 of the Mumbai Municipal Corporation Act, 1888 (for short “the said Act”). The first of such notice was issued on 13th December 2011 (Exhibit-D to the petition).

2. The notice at Exhibit-D records that as the structures of the petitioners are situated within a distance of 10 meters from the main water pipeline supplying water to the city of Mumbai, the same are required to be demolished as per the directions issued in PIL No.140/2006.

3. The contention of the learned counsel appearing for the petitioners is that the structures subject matter of this petition are situated on private properties and, therefore, due process of law has not been followed and without following due process of law, the said structures cannot be demolished.

4. The learned counsel appearing for the first respondent submits that the structures are being demolished for implementing the directions issued in PIL No.140/2006.

5. A perusal of the petition shows that in the first paragraph, the petitioners have mentioned CTS numbers of the lands on which the subject structures are situated. There is an additional affidavit dated 22nd March 2018 filed by the first petitioner to which a chart setting out the names of the petitioners and CTS numbers of the lands on which their respective structures are situated has been annexed. The last column of the chart sets out the names of the owners of the lands. In support of the contention that the structures are on private properties, reliance is placed on copies of 7/12 extracts and copies of the property register

cards. Nothing is placed on record by the first respondent to show that the structures are situated on the public property or the property vesting in the first respondent- Municipal Corporation. The documents annexed to the affidavit, prima facie, show that the lands on which subject structures are situated may not be vesting in any public authority or the State.

6. Therefore, this petition will be covered by the judgment and order dated 1st March 2018 in Writ Petition No.454/2016 (Navinchandra Shyamji Chhadva and others v. State of Maharashtra and others).

7. For the reasons recorded in the said judgment and order, we pass the following order:

- (i) We hold that in the facts of the case and for the reasons set out above, the action of demolition proposed to be taken on the basis of notice at Exhibit-D 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 earlier part of the judgment and order;
- (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 judgment and order.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)