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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L)NO.3501 OF 2017

Mohd.Jakir Mohd. Umar & Ors. ...Petitioners
vs.
Assistant Commissioner,
Municipal Corporation of
Greater Mumbai & Ors. ...Respondents

Mr.Asif Hussain i/b Hina Ansari for the Petitioners
Mr.Hemant Haryan, AGP for the respondent-State
Ms K.H.Mastakar for MMC.

CORAM : A.S.OKA, &
P.N.DESHMUKH,JJ.
DATE : FEBRUARY 7, 2018

P.C.:

1 Heard the learned counsel for the petitioners, the learned counsel for the respondent Nos.1 and 2 and the learned AGP for respondent Nos.3 and 4. Action of demolition is sought to be taken against the structures of the petitioners on the basis of the public notice at Exhibit-A issued by the Assistant Commissioner of the second respondent-Mumbai Municipal Corporation. The order of demolition is passed for implementation of the scheme of widening of Mithi river.

2 There is an affidavit of Shri Sunil Shinde, Tahsildar (Enc./Rem.) in the office of the Deputy Collector, Bandra, Mumbai. In the affidavit, it is stated that the order of eviction was passed against the subject structure and other structures on 16th

March 2015 by the Deputy Collector (Encroachment) cum Competent Authority under the provisions of section 3(2) and 2(4) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short 'Slum Act'). The affidavit further discloses that large number of slum dwellers had preferred appeals under section 35 of the Slum Act. The said appeal was allowed by the order dated 13th December 2017. The orders of eviction dated 16th March 2015 have been set aside by the Appellate Authority and the matters have been remitted to the Deputy Collector (Encroachment) cum Competent Authority for fresh adjudication and for passing a fresh order. To the affidavit of Shri Shinde, a copy of the order of the Appellate Authority has been annexed.

3 Therefore, it is obvious that unless and until the Deputy Collector (Encroachment) passes an order of eviction under the Slum Act, the respondent Nos.3 and 4 cannot take action of eviction. As far as the Mumbai Municipal Corporation is concerned, the demolition is sought to be made on the basis of the public notice at Exhibit-A. Obviously, due process of law is not followed by the Mumbai Municipal Corporation. It is not stated in the public notice that the structures are sought to be demolished on the ground that the same are illegal. Therefore, if Mumbai Municipal Corporation wants to take action, the said Municipal Corporation will have to follow due process of law.

4 Hence, we dispose of the petition by passing
the following order:

(I) We hold that the act of publication of public notice at Exhibit-A cannot be termed as due process of law which can be followed before the structures of the petitioners are demolished;

(II) Subject to what is observed above, we restrain the respondent Nos.1 and 2 from demolishing the structures of the petitioners on the basis of the said public notice dated 28th November 2017 (Exhibit-A to the petition);

(III) We make it clear that it is always open for the said respondents to follow due process of law and demolish the structures of the petitioners/evict the petitioners;

(IV) All contentions of the parties in that behalf are kept open;

(V) We make it clear that this order will not affect the pending proceedings under the Slum Act;

(VI) Writ petition is disposed of.

(P.N.DESHMUKH,J.)

(A.S.OKA,J.)