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

WRIT PETITION (L) NO.3334 OF 2017

Dr. Kesharsingh Ramkrishna Patil and Ors. ... Petitioners

Versus

State of Maharashtra and Ors. ... Respondents

WITH

WRIT PETITION (L) NO.3605 OF 2017

Deepmala Ashok Kharade and Ors. ... Petitioners

Versus

State of Maharashtra and Ors. ... Respondents

Mr. A.V. Anturkar, Senior Counsel a/w Mr. Sandeep Madhukar Phatak
a/w Mr. Yatin Malwankar for the Petitioners in both matters.

Ms. Jyoti Chavan, AGP for the Respondent – State in WPL/3334/2017.

Mr. U.S. Upadhyay, AGP for Respondent – State in WPL/3605/2017.

Ms. Shital Mane for the Respondent – BMC in WPL/3334/2017.

Ms. Aarti Bhide for the Respondent – BMC in WPL/3605/2017.

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

DATE ON WHICH SUBMISSIONS WERE HEARD : 16.08.2018

DATE ON WHICH JUDGMENT IS PRONOUNCED : 17.09.2018

JUDGMENT (PER A.S. OKA, J.):

1 As the facts leading to filing of these two petitions are more or less identical, the same are taken up together for final disposal. Public Interest Litigation No.140 of 2006 was filed in this Court by Janhit Manch and others. By the said PIL, it was brought to the notice of this Court that the length of the main water pipeline passing through the Mumbai and Mumbai Suburban Districts which supply drinking

water to the city is about 160 kilometers out of which pipeline having length of 90 kilometers is above the ground and remaining is underground. It is pointed out that there are large illegal structures erected abutting the said pipeline and over the said pipeline. It was contended that these illegal constructions pose a threat to the said pipeline. As per the order passed in the PIL, a Committee headed by the Chief Secretary of the State Government was appointed to look into the issue. The Committee recommended the removal of all structures within the distance of 10 meters from the main pipeline and also recommended rehabilitation of eligible persons holding the structures within the distance of 10 meters from the pipeline. The State Government agreed with the recommendations of the Committee by filing an affidavit. Ultimately, the PIL was disposed of by the order dated 14th October 2009 accepting the report and directing removal of all structures within the distance of 10 meters from the said main pipeline. One of the observations made by this Court in the PIL was that unless the structures are removed, the pipeline may easily become a subject of terrorist attack. It was also observed that any such attack will endanger the life of the citizens of Mumbai. Thus, in fact the Division Bench directed removal of all structures within the distance of 10 meters from the main pipeline. The pipeline supplies the drinking water from various lakes in Thane District as well as lakes in the city such as Vihar and Tulsi.

2 In these two petitions, the challenge is to the notices of 13th December 2017 issued by the Brihanmumbai Municipal Corporation (for short “the said Corporation”) to the petitioners. By the said notices, some of the petitioners were informed that their structures were required to be demolished as the same are within the distance of 10 meters from the main pipeline. Some of them were informed that there

non-residential structures have been found to be eligible for rehabilitation. They were informed that these structures were required to be demolished for giving effect to the directions in PIL No.140 of 2006.

3 During the pendency of the petitions, amendments were carried out giving details such as city survey numbers/ survey numbers of the lands on which structures of the petitioners are situated. Compilations were tendered on record of property register cards of the said city survey numbers. By amendment, a contention was raised that without following due process of law, the structures subject matter of these two petitions cannot be removed as the same are not on a public property but the same are situated on private property described in the petition.

4 In Writ Petition (L) No.3334 of 2017, the Assistant Commissioner 'L' ward of the said Corporation has filed a communication on record dated 20th June 2018. In the said petition, there are 57 petitioners claiming to be in possession of their respective structures. In the said communication, he has stated that the petitioner nos.29 to 32, 37, 39 to 41, 52, 54 and 57 are having their structures on the Central Government land (the land of the Airport Authority of India). It is stated that the structures of rest of the petitioners are on privately owned lands. It is further stated that out of the said petitioners, the petitioner nos.52 and 54 are found to be ineligible for rehabilitation. The petitioner nos.29 to 32, 39 to 41 and 57 are found to be eligible for rehabilitation. It is further stated by the Assistant Commissioner that the documents of petitioner no.37 are under verification.

5 As far as Writ Petition (L) No.3605 of 2017 is concerned, the Assistant Commissioner of 'L' ward has placed on record a communication dated 20th June 2018. In the said communication, he has stated that the structures of the petitioner Nos.6, 7, 36 and 44 are on a public property held by the Airport Authority of India. It is further stated that the petitioner Nos.6, 7 and 44 are held to be eligible for rehabilitation and the petitioner No.36 is held to be ineligible. It is further stated that the structures of the petitioner Nos.48 and 49 are on the land vesting in the Mumbai Municipal Corporation and it is found that they are ineligible for rehabilitation. It is further stated that the structures of the rest of the petitioners are on a privately owned land. In Writ Petition (L) No.3605 of 2017, there are 58 petitioners.

6 The learned senior counsel appearing for the petitioners submitted that whether the structures are on a private property or on a public property, the petitioners being holders/owners of the structures cannot be dispossessed without following due process of law inasmuch as if they are dispossessed without following due process of law, their rights under Article 300-A of the Constitution of India will be violated. He invited our attention to the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the said Act of 2013"). He invited our attention to the definition of "land" under the provisions of the said Act of 2013 and submitted that the structures are included in the definition of land. He also invited our attention to the definition of "person interested" in clause (x) of Section 3 of the said Act of 2013. He submitted that it includes all persons claiming an interest in compensation and persons whose preliminary source of livelihood is likely to be affected by acquisition. He submitted that under the said Act of 2013, cost of acquisition includes cost of building which is acquired.

He submitted that compensation is payable to the affected families and therefore, the petitioners are the persons interested within the meaning of the said Act of 2013. He relied upon the interpretation put by a Division Bench of this Court in the case of *Kachrual Hiralal Dhoot Vs. The Gurudwara Board*¹ to the expression “person interested” under the Land Acquisition Act, 1894. Relying upon a decision of the Apex Court in the case of *Hindustan Times and Ors. Vs. State of U.P. and Anr.*², he urged that the expression of “law” within the meaning of Article 300-A would mean a Parliamentary Act or an Act of State Legislature. He submitted that assuming that some of the petitioners are having their structures on the land which is a public property, apart from the fact that the petitioners cannot be deprived of their structures in violation of Article 300-A of the Constitution of India, they are entitled to compensation/ rehabilitation under the said Act of 2013.

7 The learned counsel appearing for the said Corporation submitted that the structures subject matter of these petitions are illegal and they are required to be demolished as the same are situated within the distance of 10 meters from the pipeline which supplies water to the city.

8 We have considered the submissions. Admittedly, the structures of some of the petitioners are on privately owned land. In case of similar structures, this Court has issued directions in Judgment and Order dated 1st March 2018 in Writ Petition No.454 of 2016 (Navinchandra Shyamji Chhadva and Ors. Vs. State of Maharashtra and Ors.) In the said case, notices were served to the petitioners under Section 314 of the Mumbai Municipal Corporation Act, 1888 (for short

1 . 1977 SSC Online 124

2 . (2003) 1 SCC 591

“the said Act of 1888”). This Court after considering the provisions of Section 314 of the said Act of 1888 came to the conclusion that giving notices to such structures on private property under Section 314 of the said Act will not amount to following due process of law. In the present case, there is nothing placed on record by the said Corporation to show that any due process of law was followed before ordering demolition of the structures on the private properties. The notices which are impugned do not refer to exercise of any particular statutory power. Even if the structures are unauthorised, due process of law as laid down in the said Act or the Maharashtra Regional and Town Planning Act, 1966 or the said Act of 1888 will be required to be followed.

9 As regards the structures which are allegedly on public property, except for sending the impugned notice dated 13th December 2017, no other process has been adopted by the Mumbai Municipal Corporation. In case of the structures on public property which are constructed without obtaining permission of the Competent Authority, there are powers conferred on the said Corporation both under the said Act of 1888 and the MRTP Act to take action of demolition. Apart from these two laws, in case of illegal structures on the land vesting in the State Government, there are powers vesting in the State Government under the Maharashtra Land Revenue Code, 1966 for demolishing the structures erected by making an encroachment on the Government land. There are similar powers vested in other public authorities under the relevant statutes. The grant of compensation/ rehabilitation under the said Act of 2013 is not a condition precedent for exercise of the powers of demolition of illegal structures under the relevant statutes.

10 As regards the structures on private property which are within the distance of 10 meters from the main pipeline, if the

structures are illegal, the said Corporation has all the powers under the said Act of 1888 and the MRTP Act to take action of demolition.

11 In case of those petitioners who are held to be eligible for rehabilitation, the said Corporation will have to communicate a concrete offer of rehabilitation. If the offer is accepted by the concerned petitioners, there will be no question of adopting any due process of law.

12 If the illegal structures are demolished in exercise of powers under the statutes which empower authorities to take action of demolition of illegal structures, there will not be any occasion to take proceedings under the said Act of 2013. If illegal structures are demolished after following due process of law, there cannot be any violation of rights under Article 300-A of the Constitution of India. In this case, even in case of structures which are stated to be on public property, due process of law has not been followed.

13 Accordingly, the petitions must succeed in part and we pass the following order :-

ORDER

(A) In Writ Petition (L) No.3334 of 2017 :

(a) In case of the structures of the petitioners other than the petitioner nos.29 to 32, 37, 39 to 41, 52, 54 and 57, the case will be governed by the Judgment and Order dated 1st March 2018 in Writ Petition No.454 of 2016 and therefore, due process of law will have to be followed for demolishing their structures;

(b) As regards the petitioner nos.29 to 32, 37, 39 to 41 and

57 in Writ Petition (L) No.3334 of 2017, within a period of three weeks from the date on which this judgment is uploaded, a concrete offer in writing for rehabilitation shall be given by the said Corporation. The structures of the said petitioners shall not be demolished till the date of communication of the offer to the said petitioners. Time of one month shall be granted to the said petitioners to accept the offer for rehabilitation and to vacate their respective structures from the date of receipt of the offer. Within a period of three weeks from the date of receipt of the letter of offer, the concerned petitioners shall communicate to the Assistant Commissioner of 'L' ward their acceptance or rejection of the offer. In case of the petitioners who accept the offer within a period of three weeks as aforesaid, on expiry of period of one month from the date of service of the letter of offer, it will be open for the said Corporation to demolish their structures. In case of the petitioners who reject the offer by a communication in writing within a period of three weeks, their structures shall be demolished only after following due process of law;

- (c) Those petitioners who do not either accept or reject the offer of rehabilitation within the stipulated period of three weeks, it will be open for the said Corporation to immediately demolish their structures;
- (d) Within a period of three weeks from the date on which this judgment and order is uploaded, the said

Corporation will communicate the reasons to the petitioner nos. 52 and 54 as to why they are held ineligible for rehabilitation. Till the date of communication of the reasons and for a period of four weeks thereafter, no action of demolition shall be taken in respect of their structures to enable the said petitioners to adopt appropriate remedy;

- (e) As regards petitioner no.37, we direct the said Corporation to decide the issue of eligibility within a period of one month from the date on which this Judgment is uploaded and to communicate the said decision to the said petitioner. In case the said petitioner is held to be eligible, the directions issued above as regards those petitioners who are already held to be eligible will apply. In case he is held to be ineligible, the directions issued above in case of ineligible petitioners shall be followed;

B] Writ Petition (L) No.3605 of 2017 :

- (a) In case of the petitioners in Writ Petition (L) No.3605 of 2017 (All the petitioners other than petitioner nos.6, 7, 36, 44, 48 and 49) whose structures are situated on private properties, they will be governed by similarly placed petitioners in Writ Petition (L) No.3334 of 2017;
- (b) In case of those petitioners who are held to be eligible for rehabilitation (petitioner nos.6, 7 and 44) and those who are held to be ineligible for rehabilitation

(petitioner nos.36, 48 and 49), their cases will be governed by the directions issued in case of similarly placed petitioners in Writ Petition (L) No.3334 of 2017;

- C] The issue in what manner eligible persons shall be rehabilitated is kept open and no adjudication is made on the said issue;
- D] Rule is made partly absolute on above terms;
- E] All concerned to act upon an authenticated copy of this order.

(RIYAZ I. CHAGLA, J)

(A.S. OKA, J)