

Sharayu Khot.

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

WRIT PETITION (L) NO. 3616 OF 2017

Nagesh Rambhau Kalekar

...Petitioner

Versus

**Municipal Corporation for Greater
Mumbai**

...Respondent

Mr. V.T. Dubey, for the Petitioner.

Mr. Steevson Poulson and Ms. Pallavi Thakar, for the
Respondent-BMC.

**CORAM : ABHAY S. OKA AND
RIYAZ I. CHAGLA, JJ.**

DATE : 9 March 2018

ORDER :

1. Rule.

2. The learned Counsel for the Respondent waives service.

3. The challenge in the Petition is to the notices issued by the Respondent Corporation on 11 December 2017. Notices have been issued for demolition of the structure of the Petitioner on the ground that the same is situated within the distance of 10 meters from the main water pipeline supplying water to the City.

4. In view of the order dated 4 January 2018, the Assistant Commissioner “L” Ward of the Respondents-Corporation passed an order dated 21 February 2018. The said order is taken on record and marked “X” for identification. By the said order, the Respondents-Corporation declined to grant the benefit of Kurar pattern to the Petitioner.

5. The submission of the learned Counsel for the Petitioner based on property register card annexed to the

Petition is that the Petitioner's structure is situated on a private property owned by Kevalchand Tarachand Chhajed & Ors. He has also relied upon the rent receipts issued by the landlord. We have perused the impugned notice dated 11 December 2017. The said notice does not refer to any specific provision of law under which the action of removal of the structure is also sought to be taken. The other contention raised in the Petition is that the Petitioner's structure is not within the distance of 10 meters from the Tansa pipeline which supplies water to the City from Tansa lake and therefore, the directions issued in Public Interest Litigation No. 140 of 2006 will not apply to this case.

6. The learned Counsel for the Municipal Corporation relied upon the order passed in Public Interest Litigation No. 140 of 2006 and submitted that after examination of all the relevant documents, it was found that the Petitioner is ineligible for grant of alternate accommodation. No interference is called for, as the structure is within 10 meters from the pipeline.

7. As far as the last contention raised by the learned Counsel for the Petitioner is concerned, we find that by an order dated 16 February 2018 in Public Interest Litigation No. 140 of 2006, this Court has held that the directions issued in Public Interest Litigation No. 140 of 2006 are not confined to main pipeline, which supplies water from Tansa lake, but the same are applicable to all main water pipelines which supply water to the City. Therefore, said contention has no merit.

8. In writ jurisdiction under Article 226 of the Constitution of India, the issue whether the land on which structure is situated is a privately owned land cannot be decided. Moreover, the property register card and 7/12 extract annexed to the Petition *prima facie* show that the land is not a public property. There is no material placed on record along with the Affidavit in Reply to show that the land is vested either in the State Government or in the Respondents-Corporation.

9. Therefore, this Petition will be governed by separate

judgment and order delivered today in Writ Petition (L) No. 3187 of 2017 and other connected matters. For the reasons recorded above and for the reasons stated in separate order in Writ Petition (L) No. 3187 of 2017, we dispose of the said Petition by issuing the direction in terms of the said order.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]