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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.3671 OF 2017

David John Gonsalves & Ors. ...Petitioners
vs.
Municipal Corporation for
Greater Mumbai ...Respondent

Mr.V.T.Dubey for the Petitioners
Ms Pallavi Thakar for the respondent-MMC

CORAM : A.S.OKA, &
RIYAZ.I.CHAGLA,JJ.
DATE : MARCH 16, 2018

P.C.:

1 Heard the learned counsel for the petitioners. The structures which are subject matter of this petition are sought to be demolished for implementation of the directions issued by this Court in PIL No.140 of 2006 on the ground that the structures are situated within 10 meters from the main pipe line supplying water to the city.

2 The contention of the petitioners is that the structures subject matter of this petition are situated on the land bearing Survey No.1 Hissa No.16 at Village Kurla, Mumbai suburban district which was originally owned by the father of the first petitioner.

3 A copy of the 7/12 extracts of Survey No.1 of Hissa No.16 shows that one Philip Aales Ghosal and three others were the holders thereof. Mutation Entry No.8217 which was certified on 16th March 1959

shows that the name of the first petitioner was mutated in the 7/12 extracts of Survey No.1, Hissa No.16. After perusal of the documents, prima facie, it appears to us that the structures subject matter of this petition are not situated on a public property. Prima facie, it appears to us that the land on which the structures are situated is not the property vesting either in the State Government or the Municipal Corporation. Therefore, for the reasons recorded in the Judgment and Order dated 1st March 2018 in Writ Petition No.454 of 2016 in the case of Navinchandra Shyamji Chhadva Son of shyamji Chhadva and others vs. State of Maharashtra and others, we pass the following order:

(I) We direct the respondents that the structures subject matter of this petition shall not be demolished without following due process of law as indicated in the Judgment and Order dated 1st March 2018 in Writ Petition N.454 of 2016;

(II) We make it clear that we have made no final adjudication on the question of title in respect of the land below the structures and whether the structures of the petitioners are authorised and/or protected under some policy. All these questions should be dealt with by the concerned authority of the Municipal Corporation while due process of law is followed;

(III) Rule is made absolute on above terms.

(RIYAZ.I.CHAGLA,J.)

(A.S.OKA,J.)