

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

WRIT PETITION (LDG.) NO. 3700 OF 2017

Prafulla Vasu Shetty and others. ... Petitioners.
V/s.
Municipal Corporation for Greater Mumbai ... Respondent.

Mr.Virendra T. Dubey for the petitioners.
Ms.Vandana Mahadik for the respondent- MMC.

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

DATE : 6th April 2018.

P.C.:

Heard the learned counsel for the petitioners and the learned counsel appearing for the respondent. The order dated 23rd February 2018 reads thus:

“Mr.Dubey, the learned counsel for the Petitioners states that the Petitioner No.1 has expired in February 2018. Hence, place this petition high upon board on 16th March 2018. Ad-interim relief granted earlier to continue till the next date.”

The order dated 16th March 2018 passed in this petition reads thus:

“1 Our attention is invited to the order dated 23rd February 2018. The learned counsel for the petitioners states that the statement made by him which is recorded in the said order is not correct and in fact, the first

petitioner is alive. If that be so, the first petitioner is directed to file affidavit along with necessary documents. To enable the petitioners to do, we direct that this petition shall be listed on 6th April 2018 “High upon Board”. Ad-interim relief granted earlier to continue till then.”

In terms of the last order, the first petitioner has filed an affidavit 23rd March 2018 in which she has stated that her husband died on 14th February 2018. A photostat copy of the death certificate issued by the Chief Registrar of Births and Deaths of the State of Karnataka is annexed to the affidavit. In view of the statement on oath of the first petitioner, we accept the statement of the learned counsel appearing for the petitioners which is recorded in the order dated 16th March 2018.

2. The present petition is filed for challenging the notices dated 18th December 2017, copies of which are annexed at Exhibit-D (Collectively). By the said notices, the petitioners have been informed that their structures are required to be demolished for implementing the orders passed by this Court in PIL No.140/2006. By the said orders, the respondent- Municipal Corporation was directed to remove the structures situated within the distance of 10 meters from the main pipelines supplying water to the city of Mumbai. The contention of the petitioners is that the first petitioner is the lessee of land bearing Survey No.80, Hissa No.3 corresponding to CTS Nos.238 and 238/1 of village Kurla, Mumbai on which the subject structures are situated. The case of the petitioners is that the first petitioner is the mother of the other petitioners. In support of their contention, a reliance is placed on a registered deed of

assignment dated 6th July 1995 executed in favour of the first petitioner by one Asgaralli Chingan Kureshi in respect of the land bearing City Survey Nos.238 and 238/1 of Kurla. Reliance is also placed on the photostat copies of the property register cards annexed at pages 27 and 28 of the petition which show the entry of name of the first petitioner as holder.

3. On 22nd December 2017, an affidavit was directed to be filed by the respondent. There is no affidavit filed and nothing is placed on record to show that the structures subject matter of this petition are situated either on the Government land or the land vesting in the respondent or any other public authority.

4. Therefore, in the facts of the case, it cannot be said that the service of notices/ letters at Exhibit-D (Collectively) amounts to following due process of law, especially when the documents annexed to the petition, *prima facie*, support the case of the petitioners that the subject structures are situated on a private property.

5. Hence this petition will be governed 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***).

6. 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 notices at Exhibit-D (Collectively) 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 said 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.)