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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 821 OF 2018**

Daljit Singh & Ors ...Petitioners
Versus
Municipal Corporation for Greater Mumbai & Anr ...Respondent
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WRIT PETITION (L) NO. 1158 OF 2019

Daljit Singh & Ors ...Petitioners
Versus
Municipal Corporation for Greater Mumbai & Anr ...Respondent
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Mr Milind Sathe, Senior Advocate, with Mr Rajkumar Mishra, i/b RK Mishra & Co., for the Petitioners in WP/821/2018.
Mr Vijay Thorat, Senior Advocate, with Mr Sandeep Sharma and Mr Rajkumar Mishra, i/b RK Mishra & Co., for the Petitioner in WPL/1158/2019.
Mr AY Sakhare, Senior Advocate, with Ms Vandana Mahadik, for the MCGM in both the matters.
Mr Abhay L Patki, Additional GP, for the State in WP?1158/2019..
Mr Simil Purohit, I/b RB Mokashi & Associates, for Respondent No. 3 in both the matters.
Mr Anik Kshirsagar, Assistant Engineer (Maintenance), M/W, Ward, is present, in person.

**CORAM: S.C. DHARMADHIKARI &
G.S. PATEL, JJ
DATED: 17th June 2019**

PC:-

1. An affidavit in rejoinder confirming the oral undertaking given to this Court on previous occasion is tendered. That is taken on record.

2. On 15th April 2019, the following order was passed in these petitions:

“1. The petitioners in Writ Petition No.821 of 2018 are three individuals and the fourth (petitioner No.4) is a Company incorporated under the Companies Act, 1956.

2. It is claimed that petitioner Nos.1 to 3 are citizens of India and children of one late Amrik Singh Saini. The 4th petitioner is a Company and it is stated that the petitioners' late father along with the petitioners are in exclusive use, occupation and possession of a plot of land admeasuring 3400 sq. metres or thereabout together with structures bearing Survey No.419, CTS No.344 of Village Chembur, Taluka Kurla in the Registration District of Mumbai Suburban.

3. Although the description in para 2 of the petition of the immovable property and in Exhibit-A is seriously under dispute, the Municipal Corporation of Greater Mumbai, as is set out in the petition, proceeded to hold an inquiry and thereafter to remove the petitioners. There is an adjacent plot as well. The petitioners claim and equally

the 3rd respondent to this petition that CTS No.344 is the land on which a claim is laid by the petitioners in this petition.

4. After this writ petition was filed and an order was passed, the Notice issued on 8-8-2013 by the Municipal Corporation and equally a communication of 15-12-2017 were all considered and thereafter the Municipal Corporation was directed to pass a fresh order after hearing all the parties. The fresh order is now impugned in the companion writ petition of 2019 [Writ Petition (Lodging) No.1158 of 2019].

5. After a brief hearing today, Mr. Thorat, learned Senior Counsel appearing for the petitioners in WPL-1158/2019, Mr. Purohit, appearing on behalf of respondent No.3 Developer and Mr. Sakhare, learned Senior Counsel appearing for the Municipal Corporation are agreed to the following order and directions:

- (a) That by 23-4-2019, the Municipal Corporation will, through its competent officials, carry out measurement of CTS No.344 on which the petitioners in Writ Petition No.821 of 2018 claim to have structures or open land but under their use, exclusive possession and control. This would be measured in the presence of the petitioners or their representatives by the Municipal officials and thereafter a Map will be drawn up. That Map will be utilized by all concerned and would be accepted to be authentic in further proceedings, particularly in these petitions.
- (b) It is, however, clarified that the measurement is

without prejudice to the rights and contentions of all parties.

(c) The challenge to the impugned order passed by the Municipal Corporation would be considered after such a measurement is carried out and the outcome thereof is indicated by drawing a Map and placing it on the records of these petitions.

(d) In implementing our order and directions, no cognizance be taken of any alleged order or direction of the Minister of State for Urban Development, Government of Maharashtra, copy of which is at Annexure-N, page 242 of Writ Petition (Lodging) No.1158 of 2019.

6. We post these petitions on 25-4-2019 on the supplementary board.

7. The ad-interim order to continue till 26-4-2019.”

3. On 25th April 2019, the following order came to be passed:

“1. Pursuant to our earlier order and directions, a measurement has been carried out. A map has been drawn up after such measurement, which is duly signed by the Assistant Engineer (Maintenance) M/West Ward. The map has been prepared after the survey was carried out by the Municipal Corporation’s licenced Surveyor. The authorised signatories have signed the map.

2. Mr.Thorat learned senior counsel appearing for the petitioner, on instructions, states that this map is acceptable to the petitioners. It is taken on record by consent of the parties and marked as ‘X’ for identification.

3. At the request of Mr.Thorat and in order to enable him to make detailed submissions on the contents of the petitions and their annexures so also this map, we place these matters on 10th June, 2019. The ad-interim relief to continue till 15th June, 2019.

4. A complete set be also filed, together with the existing map marked as 'X', relating to survey."

4. Pursuant to the order of 25th April 2019 and particularly paragraph 2 thereof, Mr Thorat says that the Petitioners accept the measurement map which has been prepared and tendered on record of this petition after the survey and measurement was carried out in accordance with the orders of this Court.

5. However, Mr Thorat submits that the larger challenge is not given up. The Petitioners are not accepting that they are unauthorized occupants or carrying on commercial activities unauthorisedly and illegally, nor are they admitting that they can be pushed into or forced to join a slum rehabilitation scheme. Either way Mr Thorat submits that the impugned order is unsustainable, for it seeks to remove the structures without adherence to law. The order is passed in furtherance of a notice

which is neither traceable to Chapter V-A of the Mumbai Municipal Corporation Act 1988 nor the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act 1971. Thus this is not a notice based on which the impugned order could have been passed.

6. We have perused the impugned order and the notice preceding it. It is clear from a reading of the same that the notice and the order both presuppose that the Petitioners have occupied the premises unauthorisedly or are carrying on commercial activities illegally and unauthorisedly. If that be so, then the Municipal Corporation must be shown to have exercised its powers lawfully under the municipal legislation governing it. The notice and order must show that the offending structures and activities are on municipal land, not in existence prior to the cut-off date, and are, therefore, required to be stopped, failing which all the consequences must be suffered.

7. If there is a slum rehabilitation scheme in which the subject immovable property or portions thereof are included then too there

is a competent authority within the meaning of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act 1971 which alone can exercise the powers. The notice is not traceable to this Act as well.

8. Whichever way one looks at it, it is not possible to sustain the impugned notice and the order. There are specific provisions to resume municipal property in the hands of the unauthorized persons. That is the scheme outlined in Chapter V-A of the Mumbai Municipal Corporation Act 1888. In the event there is an unauthorized construction and unauthorized development on municipal land, then in the scheme of planning laws the Petitioners will have to be given a specific notice traceable to the provisions of the Mumbai Municipal Corporation Act, 1888 and the Maharashtra Regional and Town Planning Act 1966. Thereafter reasoned orders would have to be passed in compliance with the principles of natural justice.

9. In view of the above, while we accept the measurement map and direct that all parties shall adhere to it, we clarify that the

impugned order being unsustainable in law will have to be quashed and set aside. It is quashed and set aside leaving open all the remedies to the Municipal Corporation of Greater Mumbai to take recourse either under its own legislation or the planning law or the general law. All contentions of both sides including that of the Petitioners on the point of jurisdiction and maintainability of such proceedings are kept open.

10. This would equally apply to the proceedings initiated under the Slum Act. All contentions of both sides are kept open in that regard as well.

11. We clarify that our order and our observations therein shall not affect the private rights of the developer who has been impleaded in this petition as Respondent No. 3.

12. Needless to clarify that this order and the whole issue projected in this petition revolves around City Survey No. 344 and our order is confined to that plot only.

13. The writ petitions are disposed of in these terms. There will be no order as to costs.

(S.C. DHARMADHIKARI, J)

(G. S. PATEL, J)