

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

WRIT PETITION NO.2346 OF 2018

Piloo Fali Bomanjee & Others

.... Petitioners

Vs.

Municipal Corporation of Greater
Mumbai & Others

.... Respondents

Mr. Soli Cooper, Senior Advocate with Ms Ethel
Pereira & Ms J.P. Durve for the Petitioners.

Mr. A.K. Saxena with Ms Vandana Mahadik for
Respondent Nos.1 & 2.

Mr. Anil Singh, Additional Solicitor General, with
Mr. Aditya Thakkar, Mr. Ashish Mehta & Mr. Mohit
Sahani i/by Mr. Ashish Mehta for Respondent No.3.

Mr. Sanjay V. Agashe, Asst. Engineer (Sewerage
Project) Planning & Designing, present.

Mr. C. Raghu, Asst. Salt Commissioner, Mr. A.P.
Mohanty, Deputy Superintendent & Mr. P.K.
Sharma, Deputy Superintendent, all from Salt
Department, present.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : APRIL 15, 2019

P.C:

1. This petition under Article 226 of the Constitution of India claims diverse reliefs.

2. One of the reliefs with which we are presently concerned is prayer clause (a)(iii).

3. That prayer clause reads as under:-

“(a)(iii) To initiate, execute and complete the work of laying 400 mm dia R.C. NP 3 Class Pipe Sewer along Jaideep Nagar (13.40) mtr. wide D.P. Road at Bhandup being the missing link connecting Jaideep Nagar sewer line to the existing sewer line at the Eastern Express Highway. This would prevent the sewerage water from the nearby Bhandup Village Societies being discharged on to the salt pan lands;”

4. This writ petition has been filed in this Court and is pending from 5-6-2018.

5. Today when this matter was called out, we are concerned with this work and of the Municipal Corporation which the Municipal Corporation says it cannot carry out unless permitted by the Salt Commissioner.

6. The respondent Nos.1 and 2 before us are the Municipal Corporation of Greater Mumbai and the Municipal Commissioner whereas the 3rd respondent is the Union of India,

through the Deputy Salt Commissioner, Mumbai.

7. If permission has to be granted by the 3rd respondent to the Municipal Commissioner and the Corporation, then, there is no question of withholding of such a permission as larger public interest requires laying of a proper sewer line.

8. The sewer water from the nearby Bhandup Village Societies would not then be discharged on the salt pan land.

9. Presently, we do not find any firm instructions being received by Mr. Anil Singh, appearing on behalf of respondent No.3, but bearing in mind the urgency of the work and that it is pending completion for past more than four years, we called upon Mr. Saxena, appearing for respondent Nos.1 and 2, to take instructions from the concerned Municipal official.

10. In fact, we requested the concerned Municipal official to remain present only to sort out this issue.

11. The Municipal official, present in the Court, says that the work will have to be carried out by a contractor duly

appointed and nominated by the Municipal Corporation. For the preparatory steps and the work to be carried out, almost six months would be required.

12. In the light of the fact that there are no firm instructions and as no prejudice or loss is going to be caused to the Union of India and particularly the Salt Commissioner, we are of the opinion that we can direct carrying out of the work by the Municipal Corporation and we can further direct the Salt Commissioner to grant the necessary permission. The work is of a larger public interest. The Municipal Corporation by law is enjoined to provide for such sewage disposal measure.

13. In that regard, we can safely refer to the obligatory and discretionary duties of the Corporation.

14. By Section 61 falling in Chapter III titled as "Duties and Powers of the Municipal Authorities" it has been stated that, it shall be incumbent on the Corporation to make adequate provision, by any means or measures which it is lawfully competent to them to use or to take, for each of the matters

enumerated in the clauses of Section 61. The Municipal Corporation is, therefore, obliged to make provisions for the construction, maintenance and cleansing of drains and drainage works, and of public latrines, urinals and similar conveniences. It has also to ensure that there are no obstructions insofar as the construction and maintenance of this work. We have, therefore, found that for such a duty to be discharged by the Municipal Corporation, the Salt Commissioner, as in the past, would have to grant the necessary permission.

15. We, therefore, direct the Salt Commissioner to grant the necessary permission so that this work is undertaken by the Municipal Corporation. We direct that all the necessary formalities be completed and equally the work should be undertaken by 31-10-2019. No extension will be granted on the ground that either the formality could not be completed or the permission could not be obtained or that the necessary arrangements for carrying out the work could not be made.

16. This order is without prejudice to the rights and

contention of all parties.

17. With the above observations and directions, the petition is disposed of.

18. However, for reporting progress and compliance, list the petition on **16-7-2019**.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)