

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

WRIT PETITION (L) NO. 1965 OF 2019

Manoj Laxman Mahadeshwar	}	
and Ors.	}	Petitioners
versus		
State of Maharashtra and Ors.	}	Respondents

Mr.R.C.Dhuru with Ms.Amruta Athavale for the petitioners.

Ms.Geeta Shastri-Additional Government Pleader for the State.

Ms.Rupali Adhate for the Municipal Corporation.

**CORAM :- S. C. DHARMADHIKARI &
G. S. PATEL, JJ.**

DATED :- AUGUST 27, 2019

P.C. :-

1. By this writ petition under Article 226 of the Constitution of India, the 95 petitioners have claimed that the Municipal Corporation of Greater Mumbai must be restrained from taking action in terms of a general notice pasted at the site on 22nd June, 2019 and individual notices of 24th June, 2019. By the same, the Municipal Corporation is threatening to demolish the shop premises of the petitioners.

2. The petitioners allege that they are in possession of commercial establishments/ shops. These are lawful structures constructed more than 40 years ago. They are situated on privately owned lands. The petitioners claim that they are lawful tenants in respect of their respective portions. These premises are located on sides of Saibaba Mandir Marg, between Kairani Road and Tukaram Bridge, Mohili Village, Sakinaka, Municipal Ward No. 'L', Mumbai 400 072. The petitioners claim that in Mohili village in Sakinaka area, there lies a stretch starting from Sakinaka Municipal Chowky till Saibaba Mandir. This stretch is roughly of 1.5 kilometers length. There is a water pipeline laid by the Municipal Corporation. This pipeline is totally underground. It is about 20 to 30 feet underground. Over this underground pipeline, there is a public road of 60 feet width, over which, day and night, buses, trucks, cars and all types of vehicles ply. There is also pedestrian traffic. This position is continuing for more than 30 to 40 years. There has never been any threat to the pipeline. The other assertion of the petitioners, to be found in the writ petition, is that till date, nobody has complained about the existence of the structures nor has there any attempt been made to acquire the private lands by a process known to law. In the garb of an order and directions of this court in Public Interest

Litigation No. 140 of 2006, issued on 29th July, 2009 and 14th October, 2010, the Municipal Corporation has commenced the eviction/ demolition action and both are contrary to law. In fact, if the petitioners have to be evicted from the site, then their private lands and/ or their interests have to be secured by taking recourse to law. It is not permissible to oust the petitioners by demolishing their shops. Even if the petitioners are held to be eligible for the benefits under a scheme of rehabilitation carved out, still, now the purpose of their removal no longer survives.

3. The argument is that if, for 30 to 40 years, these petitioners have stayed above the pipeline and now the *entire* project is going to be an underground pipeline carrying drinking water for the residents of Mumbai, then, there is no occasion to maintain or repair even that part of the pipeline which is overground. That is, in any way, going to be removed. Therefore, the petitioners need not be evicted from the site. Alternatively, their eviction would require the respondents to take recourse to the land acquisition laws.

4. The argument is also premised on the fact that there are orders and directions of this court in a litigation much later. The PIL and the directions apart, similar notices and traceable to

section 314 of the Mumbai Municipal Corporation Act, 1888 have been issued. In relation to such notices and public warnings, the petitioners claim that there are litigations pending in courts. The writ petition refers to several of such notices and then relies on an order passed in Writ Petition No.454 of 2016 on 1st March, 2018. This order needs to be referred to in extenso. Writ Petition No.454 of 2016 had been filed to challenge a notice dated 16th January, 2012 issued to the petitioners therein. A copy of that notice was annexed as Exhibit 'A' to the memo of that petition. The notice referred to a direction issued by this court in PIL 140 of 2006. The notice recorded that the structures of the petitioners therein are falling within a distance of 10 meters from the main water pipeline. Firstly, we must clear this ground. This is not just any old or ordinary pipeline as projected by the petitioners to be existing in several areas in the city of Mumbai. This is a water main. It is the main Tansa pipeline which supplies drinking water to the residents of the city of Mumbai. That pipeline is huge and passes through several parts of 'L' Ward. There are structures from either side. The notice, therefore, called upon the petitioners in that writ petition to comply with the directions in the PIL and to enable the Municipal Corporation to cause their removal. If the structures were shown existing on 1st

January, 1995, then, a package can be extended to the petitioners. The same argument as is canvassed today, was canvassed in that Writ Petition based on the reply to the notice. The reply was that the pipeline is underground and below the development plan road. The structures were on private property. Therefore, the petitioners prayed that the directions in the PIL cannot be the basis on which the notice can be issued. That is not a notice, therefore, traceable to or in any event, permissible under section 314 of the Mumbai Municipal Corporation Act, 1888. This very argument is canvassed before us today.

5. After noting all the arguments, the Division Bench, in para 4, held that the construction was not made after obtaining development permission from the planning authority as required by the Maharashtra Regional and Town Planning Act, 1966. Secondly, the structures were claimed to be otherwise protected, but there was no pleading as to when the structures were constructed and under what law they are protected. Then, the court found that the structures could not be situated on the land vested either in the State or the Municipal Corporation. There was no material produced to that effect by the public officials. However, the petitioners asserted, by relying on 7X12 extracts or

Property Register Card, that the structures are situated on private land. No finding of fact was recorded by the Division Bench as there was no material to come to a definite conclusion. Thereafter, the court referred, in extenso, to the background in which the PIL was filed, the responses to the same from the public officials, directions issued from time to time and concluded that no order can be passed contrary to the directions in the PIL or to frustrate or defeat them. The PIL was entertained because this court was satisfied that presence of structures very close or within the vicinity of this pipeline poses serious health hazard. The water main pipeline cannot be maintained or repaired as no proper access thereto is possible. The water can be contaminated if the structures in the vicinity are occupied for residential or commercial use. Therefore, no order or direction defeating the directions in the PIL can be issued.

6. All that this court was concerned with or called upon to decide was whether the structures are on private land or public land. Since no definite conclusion was possible to be reached, this court referred to section 314 of the Mumbai Municipal Corporation Act, 1888. It, therefore, came to the conclusion that the act of issuing notices under section 314 would not amount to

following due process of law. Thereafter, this court came to a conclusion that the structures of the petitioners appear to be permanent and there is nothing placed on record to show that they are erected on public property. Once they were found to be issued notices under section 314 of the Mumbai Municipal Corporation Act, 1888 and that section was held to be inapplicable, this court kept the controversy open. This court did not hold as the petitioners desired that no eviction or evacuation proceedings can be initiated nor can their structures be subjected to demolition by a public body.

7. Thus, the directions and the orders in the PIL were binding on the petitioners in that petition and nothing in contravention thereof was permitted. Once the Municipal Corporation was satisfied that the structures are required to be demolished for implementing the directions of this court, this court expected the Municipal Corporation to act expeditiously.

8. A protection of such a limited nature cannot be relied upon in the manner done before us. The petitioners before us proclaim that they are on a private land and that they cannot be evicted except by acquiring their lands. We are concerned here essentially with the structures on the lands. That the structures

are within close proximity to this pipeline is undisputed. That the structures pose health and safety hazard is further undisputed. That because of the existence of these structures, it is not possible to easily access the pipeline and at places where the repairs to it are extremely urgent and necessary, is also undisputed. That day to day upkeep is not possible if people in close proximity make it impossible for the municipal staff or contractors to access it easily is accepted. Thus, the area has to be free from obstruction. A projection before us that this is an ordinary pipeline carrying water does not impress us at all. The Tansa Water Mains Pipeline cannot be equated with any other pipeline carrying water to either a structure or a building or a premises. It is a main pipeline carrying drinking water for residents of Mumbai city. That they are entitled to clean drinking water is also undisputed. If the lands were to be acquired, then, there was a different aspect altogether. Here, the Municipal Corporation's act of issuance of notice or proposing to demolish the structures but does not touch the rights in the land at all. In any case, those rights in the land do not vest in or concern the petitioners. They cannot claim that the private owners on whose lands they have their structures must be compensated in acquisition. That is for the land-owners to say and no such landowner has come before us. That the

structures pose health hazard in maintenance and repairs to the Tansa Main Water Pipeline is a primary concern of the Municipal Corporation. The structures are not being removed by the petitioners though called upon. That individual petitioners need not be parties to a PIL and that the PILs are in the nature of a rem proceedings is undisputed. There is a certain mandate flowing from the orders and directions in the PIL. Such orders bind the parties to the PIL and also those who are not parties to it. All that parties like the petitioners have to be informed is about the nature of the order and the proceedings, the directions therein and that it has to be urgently and expeditiously implemented. That the petitioners have been repeatedly informed about them is apparent from the pleadings in the present petition. They do not say that they were taken by surprise.

9. In fact, in paragraphs 10 to 14 of this writ petition, the petitioners themselves make reference to a notice under section 314 of the Mumbai Municipal Corporation Act, 1888 issued to other shopkeepers on private land. Thus, they are not taken by surprise. That they are aware of the PIL and the order therein is therefore clear from these pleadings. The petitioners are highlighting the fact that there is a huge project of laying

underground pipeline. There is also a project of tunnel, in the sense, the pipelines are going to be installed deep and much below the surface. That has to be done in phases. It is stated that there are four phases for providing adequate drinking water for the residents of Mumbai city. That is pointed out in paras 19 to 21 of the writ petition. The petitioners, therefore, argue that there is no necessity of evicting them because once the pipelines are going to be laid much deep down from the surface.

10. All these assertions fail to impress us. The petitioners cannot complain that there is no threat whatsoever to these pipelines. The concern of this court was, till date the residents of Mumbai are denied access to clean and pure drinking water. The petitioners fail to notice that the obligation to provide such drinking water up till the residence or place of work of the residence of Mumbai city is of the Municipal Corporation. The Municipal Corporation is unable to discharge this larger duty by the presence of the structures around. The presence of the structures and encroachment makes it impossible for the Municipal Corporation to provide pure and clean drinking water is the stand of the Municipal Corporation. The residents of Mumbai approached this court by pointing out that the Municipal

Corporation cannot raise such a plea and deny to the petitioners or residents of Mumbai as a whole pure drinking water. The water supply has to be hygienic. Since hygiene and health is the paramount consideration, this court entertained the PIL and issued several directions.

11. We do not think that these directions can be defeated and frustrated by entertaining such a litigation. Even if a notice is issued warning the petitioners not to obstruct the maintenance and repair works of the pipeline and to remove themselves, then, that is definitely traceable to the Mumbai Municipal Corporation Act, 1888. It is well settled that mere wrong reference to a provision of the law would not vitiate the action, if it is otherwise permissible within the four corners of the law. The notice merely makes a reference to a wrong provision, namely, section 314 and merely because that is invoked does not mean that the notice must fall to the ground. We are, therefore, of the clear view that such writ petitions are repeatedly brought before this court with a view to obtain some benefit so as to stall the eviction, which deserve to be dismissed. They deserve to be dismissed not only with heavy costs, but also with such further orders and directions as would make it impossible for the parties like the petitioners to go back and erect their structures.

12. We say so with some authority for an affidavit has been filed in this petition in reply by the Municipal Corporation. The petitioners in the present case are stated to be already noticed. The Municipal Corporation says in clear terms that on Stretch-II of Tansa Water Main, 331 structures were demolished during the period 28th November, 2017 to 31st November, 2017. The notices were issued to 956 affected structures. The Municipal Corporation says, out of total number of structures, the structures of some of the petitioners have not been demolished, but the structures which were demolished earlier are now found to be reconstructed by them. A copy of the statement, which reflects this position, is also annexed to this affidavit. Thus, the assertion is that after some structures were demolished, they are found to be reconstructed at site. The others, who have not been touched as yet have dared to make additions and alteration to their structures. Thus, these are the persons/ petitioners who can be termed as obstructionists safely. Their obstruction is a serious hurdle in maintenance and up-keeping of such a pipeline. We do not think that they deserve any sympathy. We are, therefore, not in agreement with the petitioners' counsel that the petitioners have to be rehabilitated first before their structures are removed.

13. We are also not impressed by their other assertion that the petitioners being on private lands, the lands have to be acquired by taking recourse to law. We are not impressed by any of the arguments. We are further not impressed by the fact that the petitioners must be rehabilitated and only then they can be called upon to remove themselves because these are business premises. We do not think that the directions which have been issued in PIL No. 140 of 2006 way back in 2009 should be allowed to be frustrated in this manner. We do not think that such litigation should be kept pending. That is why we have not allowed any request for adjournment or keeping back of this matter.

14. With the aforesaid observations, the writ petition is dismissed. There would be no order as to costs.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)