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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION NO.140 OF 2006**

Janhit Manch & Ors.	... Petitioners
Vs.	
M.C.G.M. & Ors.	... Respondents

None for the Petitioners.

Ms. Geeta Shastri, Additional Government Pleader for the Respondent – State.

Ms. Vandana Mahadik for the Respondent – BMC.

**CORAM : A.S. OKA &
P.N. DESHMUKH, JJ.**

DATE : 16th FEBRUARY, 2018

PC.

1 Today this PIL is not on board. However, as per the directions issued earlier, files of this PIL are produced for the sake of reference as certain Writ Petitions arising out of the directions issued in this PIL are on Board today. In PIL No.140 of 2006 a note was prepared on 2nd December, 2017 by the Master and Assistant Prothonotary. The said note proceeds on the footing that PIL No.140 of 2006 has been assigned to a Bench presided over by one of us (A.S. Oka, J.) for monitoring implementation of the directions issued therein. An administrative order was passed on 6th December, 2016 by the Hon'ble the Acting Chief Justice approving the proposal of the Registry in terms

of prayer clause (A) which seeks a direction regarding assigning the PILs and Writ Petitions relating to demolition of the structures on the basis of the orders passed in PIL No.140 of 2006 and/or rehabilitation of the affected persons. The prayer clause (A) sought by the Registry which reads thus :

“(A) Whether PIL (L) Nos.104 of 2017 and 109/2017 and Writ Petition mentioned in the Note dated 29th November 2017 submitted by learned Advocate of Mumbai Municipal Corporation and other PILs/ writ petitions relating to demolition of structures on the basis of the Orders passed in PIL NO.140/2006 and/or rehabilitation of the affected persons to be tagged together with PIL No.140 of 2006 and to be placed before the Hon'ble Division Bench presided over by Hon'ble Shri Justice A.S.Oka.”

2 Accordingly, several Writ Petitions and PILs are being dealt with by this Bench concerning implementation of the directions issued in this PIL. Perhaps, in many earlier orders passed in this PIL and other connected matters, this Court has proceeded on the footing that the directions issued in PIL are in respect of the structures falling within the distance of 10 meters from Tansa Pipeline which supplies water to the City of Mumbai. As this Bench is dealing with the implementation of the directions issued in the said PIL, today, we have carefully perused the present PIL, affidavits filed therein and the orders passed by this Court from time to time. Perusal of the PIL shows that it is pointed out by the petitioners that the total length of trunk mains carrying water from

various lakes which supply water to the city is 160 kilometers. In fact, in the affidavit filed by Shri R.R. Hariname, Hydraulic Engineer of the Mumbai Municipal Corporation of 14th March, 2007, it is stated that the trunk mains carrying water they are running above ground upto Mahim. He has stated that area surrounding these trunk mains is encroached by unauthorised hutments/slum mainly from Balkum to Mulund. It is further stated that most of the portion i.e. from the lakes upto Balkum in Thane is free from encroachment in Thane District. In the city area i.e. from Mulund upto Mahim the trunk mains are within a protected area from Khindipada (Mulund) upto Marol Maroshi, which is a prohibited area. But in certain places and beyond Maroshi, the same are encroached by slum dwellers due to uncontrolled influx of people from outside the City/ State.

3 Going back to the averments made in the petition it is stated that the diameter of the trunk mains varies from 24 inches to 108 inches. Out of the length of 160 kilometers, 70 kilometers is below the ground and 90 kilometers is above the ground. It is stated that on the date of filing of the Petition that there are number of slums on the side of the trunk mains (for convenience referred as “main water pipelines”). Paragraph 5 sets out the number of illegal structures around the main pipelines. It is stated that as a result of illegal construction on both the

sides and for other reasons, the main pipelines are completely unprotected. It is pointed out that the main pipelines are susceptible to even terrorist attacks apart from possibility of tampering/ puncturing the same. Therefore, a prayer was made for preparation of action plan for adequately protecting 160 kilo meters main pipelines carrying water for the City of Mumbai. There was a prayer to provide in the action plan for removal and rehabilitation of the slums which have come up on and around the main pipelines. There was also a prayer to construct at least 10 meter pucca road on both sides of the pipelines appropriately fenced for stopping recurrence of encroachment and providing for fast approach to motor vehicles for facilitating repairs and maintenance. There are other prayers based on the fact that part of the main pipelines are in existence for more than 100 years. Thus, the prayers made in the Petition and the averments are in relation to main pipelines carrying water for the benefit of the City. We have perused the orders passed from time to time in the PIL. In the order dated 11th December, 2009, there is a reference to an affidavit filed by Shri R.R. Hariname, the Hydraulic Engineer and the statements made in the said affidavit. A direction was issued to Shri Hariname to file periodical reports. Order dated 25th March, 2009 records statements of the learned Senior Counsel appearing for the Mumbai Municipal Corporation that the said Corporation has taken steps to remove encroachment along the main

pipelines and commitment made in the affidavit dated 25th February, 2009. Various statements have been made in the said affidavit regarding steps required to be taken by the Mumbai Municipal Corporation which is marked "X-1" for identification. Paragraphs 3 to 7 of the affidavit read thus :-

"(3) I say that the city of Mumbai is getting congested day by day and widening of the roads and removing hutments on the roadsides assumes the second highest priority. I say that Govt. of Maharashtra has given protection to the slums which are in existence upto 1.1.1995. Thus, it is incumbent on Corporation to give alternate PAP accommodations to slums prior to 1995. In case of projects viz. MUIP and Dharavi, Redevelopment Govt. of Maharashtra has extended the cut off date upto 1.1.2000. Thus, there is resistance from slum dwellers who have come between 1.1.1995 and 1.1.2000 on the ground of equity and they demand alternate accommodation. It is pertinent to note that recently as per the directions of the Hon'ble High Court, these respondents have removed all the slums on the P.D' Mello Road.

(4) I say that the Corporation has taken up the programme to remove slums along pipe line by giving alternate accommodation to eligible huts. I say that the work of wardwise station survey for the removal of hutments on and along trunk mains is completed. Hereto annexed and marked Exhibit 1 is the statistical data of these hutments. From the said data, it can be seen that there are 6687 structures prior to 1.1.1995, 2103 structures after 1.1.1995 and 6193 structures after 1.1.2000. I say that there are not enough tenements constructed even to shift the slums in the drains and the slums on the road, therefore, Corporation has to concentrate on the post-1995 slums as far as the slum removal programme on pipe line is concerned. Moreover, slums on the pipe line are in one cluster and it is difficult to isolate pre-1995 and post-1995 slums. Very often, post 1995 slums are located in between pre-1995 slums.

- (5) I say that slums along pipelines can only be removed after providing alternate accommodation to pre 1995 hutments along pipelines. I say that after exploring availability of tenements for PAPs for pipeline hutments from MMRDA, MHADA, SPPL in vain, M.C.G.M. has planned re-habilitation project near Marol Cancer Hospital in K/East Ward on encumbered municipal plot. I say that on completion of the said project and after accommodating around 1000 in situ hutments i.e. the hutments presently on the said plot about 1700 dwelling units may be available (generate there) with Corporation. This process will take about 4 years. At the same time, these respondents are also exploring other plots to implement such projects.
- (6) I say that consolidated tender for construction of compound wall/ fencing as per site conditions and for deploying round the clock security has been invited by these respondents. Similarly, the tunneling work from Maroshi to Matunga is in progress, which will make the existing trunk mains redundant.
- (7) I say that in general, the Municipal Corporation demolishes about 2500 to 3000 structures every month in the 24 wards of the Corporation. These include about 1500 shanties, 500 residential structures and 500 commercial structures. However, as far as pre-1995 structures are concerned, the Corporation has to give alternate accommodation as per policy.”

4 The further orders passed in this PIL show that this Court was monitoring the assurances given by the Municipal Corporation in the said affidavit. Thereafter, the material order passed by this Court is dated 29th July, 2009. Paragraphs 1, 4 and 5 of the said order are material which read thus :-

“1. This P.I.L. Raises many important questions which concern the health and security of the citizens and the security of the city of Mumbai and the environment.

4. Now, in order to protect the pipelines, remove the hutments and ensure that the water, which is used by the citizens of Mumbai, is safe, and to ensure that these pipelines do not become a target for persons to attack the citizens of Mumbai, we feel that it needs concerted effort and a well-thought-over policy by various agencies, including the Government of Maharashtra. This Court will be handicapped in the absence of requisite inputs and data to give directions to achieve the purpose of ensuring safety and health of people of Mumbai.

5. Therefore, to enable this Court to pass orders, which ensure safety on account of health and security of the City of Mumbai, we appoint a Committee headed by the Chief Secretary of the State. This Committee shall have the Director General of Police, Maharashtra, the Municipal Commissioner, Mumbai Municipal Corporation, and the Finance Secretary, Government of Maharashtra, as Members. They shall meet soon, consider all aspects of the matter, take assistance from any Department they like, which the Chief Secretary is otherwise authorised to do by virtue of his office, and submit a detailed plan of action to this Court within a period of 6 weeks. If the Committee, during its

deliberations, feels it necessary to seek any clarifications from this Court, it shall be at liberty to approach the Court.”

5 Accordingly, a Committee was constituted by the State Government. The Committee submitted its report which is on record of PIL No.140 of 2006. We have perused the said report. It is submitted by the Committee consisting of the Chief Secretary of the State, Principal Secretary (Finance), Directorate General of Police (M.S.) and the Municipal Commissioner of the Municipal Corporation. Paragraph 5 onwards contains the action plan proposed by the Committee. The action plan makes it very clear that the same is in respect of removing encroachments on and around the main water pipelines in Mumbai. The report is not confined only to the pipeline which supplies water from Tansa Lake to the City of Mumbai. The report contains various details such as number of illegal hutments found at that time. We may note here that paragraph 5 onwards is the actual action plan. It will be necessary to note paragraphs 5, 6 and 7 of the said report which reads thus :-

“5. Taking into consideration all the above aspects, the Committee proposes the following action plan for the consideration and approval of the Hon'ble High Court :-

- (i) All the hutments existing upto 1.1.2000 may be considered eligible for rehabilitation.
- (ii) Encroachments made after 1.1.2000 are proposed to be removed for which necessary police protection shall be given to the Officers/ employees of the Municipal Corporation of Greater Mumbai at the time of remove of encroachments.
- (iii) In step with the likely availability of alternative tenements for the eligible hutment-dwellers, a phased programme of removal and rehabilitation be taken in the following manner :-

Phase	Period	Wards	No. of Hutments to be removed	No. of Hutments to be rehabilitated
I	Upto 31.3.2011	G/N, S	1878	1113
II	Upto 31.3.2013	N, T, M/W	4604	1437
III	Upto 31.3.2014	K/E, F/N	3489	1640
IV	Upto 31.3.2015	H/E, L	5818	4600

6. The aforesaid Action Plan is based on the assumption that the lands owned by the Municipal Corporation of Greater Mumbai at Dindoshi and Marol are used by way of redevelopment for constructing, more than 10,000 tenements for the rehabilitation of eligible hutment-dwellers. However it needs to be pointed out that two writ

petitions (W.P. No.1210 & 1211 of 2009, Motion No.472 & 473 of 2009) have been filed by the occupants in respect of the land at Dindoshi, challenging the decision of the Municipal Corporation of Greater Mumbai in terms of rejecting the propose under SRA Scheme. These writ petitions are pending and the Municipal Corporation of Greater Mumbai is moving the Hon'ble High Court to allow the Municipal Corporation of Greater Mumbai to develop the land at Dindoshi so as to accommodate the existing PAPs and construct more tenements for the eligible encroachers who are to be removed from the pipeline area.

7. The Committee proposes that after removal of hutments, the reclaimed area on both the sides of water trunk mains be protected by constructing compound walls/ fencing so that no new encroachments take place in future.

The Committee also proposes that considering the length of the pipelines, adequate security arrangements be made with watch towers etc. so that the water trunk mains are not exposed to any kind of security threat etc.

The Action Plan also envisages allowing an FSI of 4.00 at Dindoshi, Marol and other similar places for rehabilitating the eligible encroachers. The Committee proposes that in order to enable the Municipal Corporation of Greater Mumbai to use maximum allowable FSI, necessary amendment in Development Control Rules should be made.”

6 Thus, all hutments existing as on 1st January, 2000 were to be considered eligible for rehabilitation. A phase-wise programme was evolved which contemplated the removal of all such hutments upto 31st March, 2015. As quoted earlier, the action plan is based on assumption that the lands owned by the Municipal Corporation of Greater Mumbai at Dindoshi and Marol are used by way of development for constructing more than 10,000 tenements for the rehabilitation of the eligible slum dwellers. The said report came up for consideration of this Court on 14th October, 2009 when this PIL was disposed of. The said order refers to an affidavit filed on behalf of the State Government by the Deputy Secretary. The date of the said affidavit is 25th September, 2009 and the said affidavit is filed by Shri K.V. Kurundkar, Deputy Secretary of the Urban Development Department. Paragraph 2 of the said order refers to the action plan which we have quoted above. Paragraph 3 refers to survey conducted by the Municipal Corporation. Paragraph 4 quotes an action plan of the Committee.

7 By order dated 14th October, 2009 the Division Bench specifically accepted the said affidavit of the Deputy Secretary and the action plan and disposed of the PIL with the direction that the plan shall be implemented in accordance with the report of the Committee. In

addition, a direction was issued to the Director General of Police to take all steps and measures which are necessary to protect the main pipeline and ensure that water reaching Mumbai is not polluted or used for any purpose which would endanger the lives of the citizens of Mumbai. The Division Bench specifically added that the directions given in the context of the security of the country and also of Mumbai which has experienced some of the worst terrorists attacks in the recent past.

8 Thus, on a conjoint reading of the order dated 14th October, 2009, the action plan prepared by the Committee set up by this Court and the affidavit of the Deputy Secretary it is crystal clear that the action plan which was accepted by the Division Bench was in respect of the removal of encroachments and structures within 10 meters on either side of water trunk mains or main pipelines. The report makes it clear that the plan is in respect of the removal of encroachments on and around the water mains in Mumbai. Even the affidavit of Shri Kurundkar makes this fact very clear. In fact, in paragraph 3 he has referred to the earlier survey by the Municipal Corporation of the hutments located within 10 meters on either side of the water mains in Mumbai. Thus, on plain reading of the final order in the PIL and action plan and the assurances of the State which were accepted, it is crystal clear that the directions issued by this Court apply to all the structures

located within 10 meters on either side of the water trunk mains (main pipelines) in the City. The object of the said order as is clearly reflected from the order dated 14th October, 2009 is to save and protect the water trunk mains from terrorists and other attacks and in turn protect the lives of citizens residing in Mumbai. Another object was to ensure that a corridor is created on both sides of water trunk mains passing through the City which should be adequately fenced so that the vehicles can immediately approach the pipelines in case of any mishap or for repairs. There are number of lakes in adjoining districts which supply water to Mumbai by main pipelines. Thus, the directions issued in this PIL are not confined to main pipeline which carries water from Tansa lake, but the same extend to all the water trunk mains which carry water from the lakes to the City.

9 As we see from the orders passed from time to time, much water has flown thereafter. The State Government took a decision to allot tenements at Mahul, Chembur to the Municipal Corporation for accommodating the occupants of those structures which were existing as on 1st January, 2000. Some of the orders passed by this Bench and earlier Bench show that there is an order of the National Green Tribunal which records a serious concern about large air pollution in the area of Mahul.

10 While we clarify the above position that the directions issued in the PIL and the action plan are in respect of the structures located within 10 meters on either side of all water trunk mains in Mumbai, it is necessary for us to remind both the State Government and the Municipal Corporation the object of passing the aforesaid directions. It is not necessary for us to mention it specifically but still we venture to do so for the sake of clarity that it is the responsibility of the State Government, the Municipal Corporation and other Government Agencies in the City of Mumbai to protect the water mains which supply water to the City. There cannot be any dispute in the aforesaid proposition. It is in this context that now we direct the Municipal Corporation to file a detailed affidavit as regards the steps taken till today for implementation of the directions issued by this Court under order dated 14th October, 2009, the action plan as well as the assurances in the affidavit of the Deputy Secretary. The affidavit will state the number of structures which have been demolished till today and the number of persons who have been rehabilitated. While doing so, the Municipal Corporation will have to set out in the affidavit as to what steps the Municipal Corporation has taken for implementation of what is mentioned in paragraphs 6 and 7 of the action plan of the Committee which record that the Mumbai Municipal Corporation will take steps to develop the lands at Dindoshi, Marol and

other similar places for rehabilitating encroachers. As narrated earlier, it was proposed that F.S.I. of 4.00 should be granted by amending D.C. Regulations. Affidavit of the Municipal Corporation shall state the steps taken in that behalf.

11 The action plan is prepared by the three Senior Officers of the State Government namely the Chief Secretary of the State, Principal Secretary (Finance) and the Director General of Police. The action plan was endorsed by the State Government by filing an affidavit of Shri K.V. Kurundkar. Therefore, it is also the responsibility of the State Government to tell the Court as to what steps were taken by the State Government to ensure that the Municipal Corporation constructs tenements at Marol, Dindoshi and other similar places for rehabilitating the encroachers and other people.

12 We direct the additional Government Pleader as well as the counsel representing the Municipal Corporation to supply a copy of this order, a copy of the action plan and a copy of the said affidavit of Shri K.V. Kurundkar, Deputy Secretary, Urban Development Department (dated 25th September, 2009) as well as the copies of all relevant orders of this Court to the Municipal Commissioner as well as to the Chief Secretary of the State so that both of them are made aware about the

seriousness of the issue, the assurances given by the Municipal Corporation as well as the State Government to this Court which were accepted by this Court by order dated 14th October, 2009. We direct the State Government and the Municipal Corporation to file detailed affidavits on the aforesaid aspects at the earliest and in any event on or before 28th February, 2018. For considering the said affidavit, PIL No.140 of 2006 shall be listed under the caption of "Directions" on 1st March, 2018. We direct the Prothonotary and Senior Master to appoint an officer under whose supervision the photocopies of the pleadings and all documents on record of PIL No.140 of 2006 shall be supplied to the members of the Bar who are appearing in this PIL as well as in connected Petition subject to payment of copying charges. We make it very specifically clear that under no circumstances the Registry will hand over the original file to the Advocates or their registered clerks to prepare photocopies. नमो भगवते वासुदेवाय

(PN. DESHMUKH, J)

(A.S. OKA, J)