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

WRIT PETITION (L) No. 1025 OF 2016

M/s. J. Gala Enterprises & Anr. ... Petitioners
V.
Municipal Corporation of
Greater Mumbai & Ors. ... Respondents

Dr. Veerendra Tulzapurkar, Sr. Counsel a/w Sanjay Kadam, Apeksha Sharma, Sanjeel Kadam i/b Kadam & Co., for Petitioners.

Ms. Geeta Joglekar, for the Respondent – BMC.

**CORAM : V.M.KANADE &
M.S. KARNIK, JJ.
DATED : 28TH APRIL, 2016**

PC. :

1. Heard learned Senior Counsel appearing on behalf of the Petitioner. He submits that the Petitioner is willing to handover the setback area forthwith. However it is submitted that it will not be possible for the Petitioner to remove the encroachments on the setback area. It is submitted that condition No.10 in the IOD casts an obligation on the Petitioner to remove all these encroachments on the said land. It is submitted that it is a primary responsibility of the Corporation to remove all encroachments and the said

responsibility now cannot be cast on the Petitioner.

2. It is a well settled position that encroachments on vacant lands have to be removed by the Corporation and not by individual owners of the structures. The Corporation shall, therefore, process the application for grant of Commencement Certificate without insisting on condition No.10 in the IOD.

3. The Petitioner shall give an undertaking within one week that he shall handover the setback area free of compensation.

4. Corporation is at liberty to remove the said structure. Liberty is granted to the Corporation to apply.

5. Stand over to 9th June, 2016.

(M.S. KARNIK, J.)

(V.M.KANADE, J.)