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## **Pani Haq Samiti & Ors. Vs. Brihan Mumbai Municipal Corporation & Ors., 2014**

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

**PUBLIC INTEREST LITIGATION NO.10 OF 2012  
ALONG WITH**

**CHAMBER SUMMIONS (LODG.) NO.362 OF 2014  
AND  
CHAMBER SUMMONS NO. 74 OF 2012**

Pani Haq Samiti & Ors. ..Petitioners  
Vs.  
Brihan Mumbai Municipal Corporation & Ors. ..Respondents.

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Mr. Mihir Desai with Mr. Chetan Mali for the Petitioners.  
Mr. Anil Singh, Senior Advocate with Ms. K.R. Punjabi for Respondent-1-  
MCGM.  
Mr. Milind More, Additional G.P. for Respondent Nos.2 and 3.  
Mr. Jayesh Gawde i/b M/s Thakore Jariwala & Associates for Applicants in  
Chamber Summons No.74 of 2012.  
Mr. Harish Pandey- Intervener – Applicant in Chamber Summons No.362  
of 2014.

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**CORAM: A.S. OKA &  
A.S. GADKARI, JJ.**

**DATE : 15<sup>th</sup> December 2014.**

**ORAL ORDER (Per A.S. Oka, J.) :-**

**1** The issue involved in this writ petition is as regards the supply  
of water to the occupants of the illegal slums in the city of Mumbai which

have come up after 1<sup>st</sup> January 2000. Considering the issues raised in the petition, the same needs a detailed hearing. Accordingly, we issue Rule. The learned Counsel appearing for the 1<sup>st</sup> Respondent waives service. The learned AGP waives service for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. We have heard the learned Counsel appearing for the parties on the prayer for interim relief. We have also heard the Applicant in Chamber Summons (Lodging) No.362 of 2014 and Applicants in Chamber Summons No.74 of 2012.

2 In the city of Mumbai, a large number of illegal slums have been erected during the last several years on the public properties held by the State Government, Mumbai Municipal Corporation and other Public Authorities. There are several reasons why the illegal slums have come up. One reason can be of failure of the Municipal and other Authorities to take timely action for preventing the construction of the illegal slums and/or demolishing the same. We must note here that the State Government has from time to time legalized the slums illegally erected on the public properties in the City of Mumbai. Another reason can be the failure of the State to make available affordable residential accommodation in the city of Mumbai for common man.

3 The Chapter-IB was incorporated in the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short “the Slum Act”). Under Clause (c) of Section 3X of the Chapter IB of the Slum Act, a protected occupier means an occupier of a dwelling structure who is holding a photo-pass. Section 3(Y) provides for issuing a photo-pass in the prescribed format to the actual occupier of a dwelling structure, in existence on or prior to 1<sup>st</sup> January 1995. The sub-section 1 of Section 3Z provides that no protected occupier save as provided in sub-section 2 shall be evicted from his dwelling structure. The deadline of 1<sup>st</sup> January 1995 provided in Chapter IB is now extended up to 1<sup>st</sup> January 2000 thereby protecting the occupier of a dwelling structure which is in existence on or prior to 1<sup>st</sup> January 2000. Sub-section 2 of Section 3Z provides that the State Government has a power to evict the protected occupiers from the dwelling structures occupied by them. The said power can be exercised by the State Government subject to condition of relocating and rehabilitating the said occupiers in accordance with scheme prepared by the State Government in that behalf.

4 Thus, initially the State Government protected the illegal slums which were in existence as of 1<sup>st</sup> January 1995 and thereafter,

extended the said protection to the illegal slums which have come up in further period of five-years.

5 In this petition, a challenge is to the Government Circular dated 4<sup>th</sup> March 1996 which provides that the Local Authorities shall ensure that the water supply is not released to any unauthorized constructions. The challenge is also to the relevant Rules framed by the Mumbai Municipal Corporation dealing with the water charges and in particular a Rule No.6.9 which initially provided that the water lines shall be made available to the structures in existence in slum areas till 1<sup>st</sup> January 1995. Now the said deadline is extended till 1<sup>st</sup> January 2000.

6 The contention of the learned Counsel appearing for the Petitioner is plain and simple. His submission is that the right to water is an essential ingredient of Article 21 of the Constitution of India and therefore, no Agency or Instrumentality of the State within the meaning of Article 12 of the Constitution of India can deny the water supply to the citizens who are occupying the illegal slums which have come up after 1<sup>st</sup> January 2000. A reliance is placed on several decisions of the Apex Court. A reliance is also placed on the Chapters on right to water in the International Covenant

on Economic, Social and Cultural Rights.

7 The submission of the learned AGP for the State Government is that the water supply is not being released to such an illegal slums as the State does not want to encourage the construction of such illegal slums and people occupying such illegal slums. He urged that there is nothing illegal in the policy of the State Government not to grant water supply to those who are residing in illegal slums. He submitted that the data set out in the affidavit-in-support of the Chamber Summons No.74 of 2012 does not support the Petitioners and the fact that even some of the Police Constables/officers are residing in the illegal slums is no ground to grant any relief to the Petitioners.

8 The learned Senior Counsel appearing for the Mumbai Municipal Corporation urged that grant of any relief to the Petitioners in the present petition will encourage the construction of the illegal slums. He submitted that the slums have been constructed on the hills and in the difficult areas of the city and even assuming that this Court grants interim relief, it is practically impossible for the Municipal Corporation to provide water supply to illegal slums on hills. He urged that there is nothing wrong

with the policy of not providing water supply to the occupiers of the illegal slums.

9 We must note here that the learned Counsel for the Petitioners during the course of his submission has relied upon the Government Resolution dated 19<sup>th</sup> June 2010 which deals with the supply of water by the local Authorities in the State. He has relied upon the Clause 3(c) of the Government Resolution which deals with the supply of water to the slums. His submission that one of three methods provided therein is of setting up public booths through which the water can be supplied on the basis of prepaid cards. Dealing with his submission, the learned Senior Counsel for the Municipal Corporation submitted that the sub-clause (c) of clause 3 of the said Government Resolution applies to the protected slums. He submitted that in any event, there is no scheme available with the Municipal Corporation of providing water supply through public water booths on the basis of prepaid cards. The Applicant in support of the Chamber Summons (Lodg.) No.362 of 2014 urged that this Court cannot pass any interim order which will result in lawlessness. He submitted that the illegal slums have also come up in the CRZ areas where the construction activities are banned. He pointed out that some slums have

been erected on the forest lands about which there are binding prohibitory orders of this Court. He submitted that the Constitution of India has guaranteed the fundamental right to receive clean air as well as a right to reside in a safe environment to every citizen. His submission is that if the water is provided to the occupants of the illegal slums, it will encourage the construction of the slums in the Eco-sensitive CRZ areas and irreparable damage will be caused to the environment. He submitted that the law abiding tax payers cannot be penalized by providing the water to the occupants of the illegal slums.

**10** We have given a careful consideration to the submissions. The scope of the Article 21 of the Constitution of India need not be restated. Suffice it to say that the scope of the Article 21 is very wide. The right to life guaranteed by the Article 21 is not of animal existence, but it is a right to live with human dignity. It is not necessary to deal with the large number of cases on this aspect, as the law is very well settled. We, therefore, may make reference of only two decisions of the Apex Court. The Apex Court in the case of *Subhash Kumar Vs. State of Bihar*<sup>1</sup> held that the right to life under Article 21 of the Constitution of India includes right of enjoyment of

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1 AIR 1991 SC 420

pollution free water and air for full enjoyment of the life. It will be necessary to make a reference to a well-known decision of the Apex Court in the case of Chameli Singh And Others Vs. State of Uttar Pradesh And Another<sup>2</sup> and particularly paragraphs 5 and 8 of which read thus:

5. In *Shantistar Builders V. Narayan Khimalal Totame* another Bench of three Judges had held that basic needs of man have traditionally been accepted to be three- food, clothing and shelter. **The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in.** The difference between the need of an animal and a human being for shelter has to be kept in view. For an animal it is the bare protection of the body; for a human being it has to be a suitable accommodation which would allow him to grow in every aspect- physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well-built comfortable house but a reasonable home, particularly for people in India can even be mud-built thatched house or a mud-built fire proof accommodation. When the urban land under Sections 20 and 21 of the Urban Land Ceiling Act was exempted subject to the condition of constructing houses to weaker sections by the builders, this Court recognized the above right to shelter as an inbuilt right to life under Section 21 and upheld the validity of exemption and gave directions to effectively implement the scheme. In *Olga Tellis V. Bombay Municipal Corporation* considering the right to dwell on pavements or in slums by the indigent was accepted as a part of right to life enshrined under Article 21 their ejection from the place nearer to their work would be deprivation of their right to livelihood. They will be deprived of their livelihood if they are evicted from their slum and

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2 AIR 1996 (2) SCC 549

pavement dwelling. Their eviction tantamount to deprivation of their life. The Constitution Bench had held that if the right to livelihood is not treated as a traditional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. The deprivation, therefore, must be consistent with the procedure established by law. It was further held that which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. **In Francis Coralle Mulin V. Administrator Union Territory of Delhi considering detention under Article 22 and its effect on Article 21, this court held that the right to life include the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading. Writing and expressing oneself in diverse forms, free movement and commingling with fellow human beings are part of the right to live with human dignity and they are components of the right to life.**"

(emphasis added)

**"8. In any organized society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restriction which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter,**

*therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light , pure air and water, electricity, sanitation and other civil amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being. Want of decent residence, therefore, frustrates the very object of the constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself. To bring the Dalits and Tribes into the mainstream of national life, providing these facilities and opportunities to them is the duty of the State as fundamental to their basic human and constitutional rights.”*

(emphasis added)

Thus, the Apex Court categorically held that right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter.

**11** We are conscious of the fact that the right to shelter

guaranteed by Article 21 of the Constitution of India does not extend to protecting possession of a citizen over an illegal/unauthorized construction/dwelling unit. All the concerned Authorities of the State including Local Authorities are under a legal obligation to ensure that the illegal constructions do not come up and that even if the illegal structures come up, the same are effectively and expeditiously demolished by following the due process of law. The issue is whether an occupant of illegal slums erected in Mumbai after 1<sup>st</sup> January 2000 can be denied the water supply by the State and the Municipal Corporation. As the right to life guaranteed under Article 21 of the Constitution of India includes right to food and water, the State cannot deny the water supply to a citizen on the ground that he is residing in a structure which has been illegally erected. We are making these observations in the context of the slums which have illegally come up after 1<sup>st</sup> January 2000. Such a citizen who occupies an illegal hut, has no right to retain the illegally constructed hut, but he cannot be deprived of his fundamental right to food and water which is an integral part of the right to life guaranteed under Article 21 on the ground that he is in occupation of an illegally constructed hut.

**12**

As far as the illegal slums in the Mumbai City are concerned,

the issue is very complex and has many facets. As stated earlier, at least at two stages, the State Government by a policy and by an enactment, has taken an extraordinary step to regularize the illegal slums which have come up in the city. There are reasons as to why the slums are coming up in the City of Mumbai and why the citizens are forced to take shelter in the illegal slums. On this aspect, it will be necessary to refer to the stand taken by the Applicants in the Chamber Summons No.74 of 2012. The said Chamber Summons and the affidavits in support thereof were filed before the deadline was extended by the State up to 1<sup>st</sup> January 2000. The Chamber Summons has been filed by the 1<sup>st</sup> Applicant who was not only a former Municipal Commissioner of the Mumbai Municipal Corporation, but was also a former Chief Secretary of the State of Maharashtra who also occupied a post of Chairman of the Mumbai Heritage Conservation Committee. The 2<sup>nd</sup> Applicant is a Civil Engineer who was a Member of the original team that formulated the proposal for Navi Mumbai along with the Architects Charles Correa and Pravina Mehta. Very interesting factual details are brought on the record on the basis of the information obtained by them under the Right to Information Act, 2005. The 2<sup>nd</sup> Applicant stated in his affidavit in support that the information provided on 27<sup>th</sup> April 2006 revealed that out of total 36,182 constables on the establishment of the

Mumbai Police , 4426 lived in the slums. Even 81 Inspectors have been residing in slums.

**13** There is a supplementary affidavit dated 24<sup>th</sup> April 2012 filed by the 2<sup>nd</sup> Applicant in the same Chamber Summons. The reliance is placed on the information received under the Right to Information Act,2005 from the Mumbai Armed Police, Worli on 6<sup>th</sup> April 2012. The said information reveals that since 1<sup>st</sup> January 1995, 1758 Constables have been inducted into Mumbai Police Force out of which only 477 have been provided with houses and 133 are living in slums which have come up after 1<sup>st</sup> January 1995. It is pointed out that none of the Public Authorities in Mumbai are able to provide the residential quarters to its employees. It is pointed out that out of 47534 employees of the B.E.S.T Undertaking , on the date of filing of the affidavit, accommodation has been provided to only 4586 employees. Paragraph 7 of the said affidavit records that the information furnished under the Right To Information Act shows that the occupants of post 1<sup>st</sup> January 1995 slums include employees of the Government itself as well as the employees of the Municipal Corporation and other Authorities. It is stated in the affidavit that only Police Department has provided the accurate figures of the employees residing in the slums. In the first

affidavit filed by the 2<sup>nd</sup> Applicant, it is stated that in a situation where the State Government encourages the creation of jobs, allows the bringing in of migrant labour and work force, makes the city of Mumbai an attraction for job-seekers, the State has done nothing to provide low cost housing in the city. It is true that the figures contained in the affidavits filed in support of the said Chamber Summons deal with those who are occupying slums constructed after 1<sup>st</sup> January 1995.

**14** The contention raised in said affidavits brings on record the situation in the city which forces the Police Constables, Police Inspectors and other employees of the Local Authorities/Public Sector Undertakings to live in the slums. A judicial notice can always be taken of the fact that the situation today in the city is no different from the situation set out in the affidavits-in-support of the Chamber Summons No.74 of 2012. The said affidavits have been filed in support of the contention that the notion that the criminals or anti-social elements are staying in the slum areas, is without any foundation. The Applicants have tried to prove the said point by pointing out that the large number of police personnel live in the unauthorized slums in the city. The reason is that affordable low priced houses are not made available in the city of Mumbai. In the city of

Mumbai, considering the rates at which houses are sold, a common man cannot even dream of acquiring a residential accommodation in the city.

**15** The learned Senior Counsel appearing for the Mumbai Municipal Corporation accepted that in case of buildings in the city of Mumbai which do not have occupation certificates or completion certificates, the Municipal Corporation is providing water supply to the occupants thereof on humanitarian grounds. Thus, the water supply is being made to the buildings which are illegally occupied without there being an occupation certificate. Thus, water is supplied to such buildings without verification of the fact whether the buildings have been constructed in terms of the sanctioned plan. In a given case, there may be large scale violations while making construction on the basis of a sanctioned plan. The policy of the Municipal Corporation is to grant water supply on the "humanitarian grounds" to those who are occupying such buildings without occupation certificate. Thus, one category of the illegal occupants are being supplied water on the humanitarian grounds though they are illegally occupying the buildings and premises having no occupation certificate. Thus, humanitarian considerations are applied to only a category of unauthorized occupants. The unauthorized occupants of

constructed buildings are protected by providing water supply, but not the persons residing in slums. We are mentioning this only to point out the approach of the Municipal Corporation.

**16** There is an affidavit filed by Smt. Seema Dhamdhare, a Joint Secretary of the Urban Development Department of the State Government in which a contention has been raised that the main intention behind issuing the Government Circular dated 4<sup>th</sup> March 1996 is to prevent the unauthorized constructions and encroachments on the public lands. Neither the State nor the Municipal Corporation have disputed before us that there are very large number of slums which have come up in the city after 1<sup>st</sup> January 2000 on public properties. There are thousands of people residing in such illegal slums. As the policy is to deny the benefit of water supply to such slums, one can imagine the methods adopted by the occupants to obtain water supply as nobody can survive without water. In the same affidavit, a reliance is placed on the amendments carried out to Mumbai Municipal Corporation Act, 1888 (for short "MMC Act") by the Maharashtra Act No.2 of 2012. After the said amendment, sub-section 1 of Section 351 provides that the Commissioner of the Municipal Corporation shall designate an officer of the Corporation to be a Designated Officer for

the purposes of Sections 351, 352, 352A and 354. It will be necessary to make a reference to Section 475B of the MMC Act brought on the statute book by the same Amending Act which reads thus:

*“475B Where it has been brought to the notice of the Designated Officer that erection of any building or execution of any such work as is described in section 342, is commenced contrary to the provisions of section 342 or 347 or is otherwise, unlawfully commenced or is being unlawfully carried on and if such Designated Officer has failed, without sufficient reasons, to take action as provided under section 351 or 354A, he shall, on conviction, be punished with imprisonment for a term which may extend to three months, or with fine which may extend to twenty thousand rupees, or with both.”*

17 Thus, the amended MMC Act imposes a duty on the Designated Officer. The duty is to take action under Section 351 or 354A in respect of erection of any building commenced unlawfully and illegally. Thus, there is a legal obligation in the Designated Officer to take action either under Section 351 or under Section 354A of the MMC Act immediately after noticing that erection of any building and/or execution of any such work has been illegally commenced. Failure to perform the said obligation without sufficient cause, is made an offence under Section 475B. The said legislative provisions reiterate the well settled principle that the Municipal Authorities are under an obligation to prevent the

construction of illegal structures and also to demolish the illegal structures.

**18** Going back to the Article 21 of the Constitution of India, as observed by us, the right to get water is an integral part of the fundamental right Article 21 of the Constitution of India. Right to get water is an integral part of the right to life conferred by Article 21. We must note here that a citizen who stays in an illegal structure or in illegal slums cannot claim right to get water supply on par with water supply made available to a law abiding citizen who has either constructed his house after obtaining a permission or who he is occupying a residential premises which is lawfully constructed and which is permitted to be occupied. It is ultimately for the Municipal Authorities to decide in what manner the water can be supplied to the occupants of the slums which have been erected after 1<sup>st</sup> January 2000. It is for the Municipal Corporation to evolve a policy for supply of water to the persons occupying such illegal slums. The said water supply may not be necessarily by providing water supply lines to the individual slums. One of the options which can be considered by the Municipal Corporation is the suggestion made by the learned Counsel appearing for the Petitioners to provide water supply on the basis of the prepaid cards as provided in Government Circular dated 19<sup>th</sup> June 2010. If there are binding

orders of this Court preventing supply of water to the slums constructed in a particular area, obviously the policy will not apply to slums in such area.

**19** As pointed out earlier, right to get water is an integral part of right to life under Article 21 of the Constitution of India. Even if the water is provided to a person occupying an illegal hut, the same does not create any equity in such person or the same does not make lawful the structure occupied by such person which is otherwise illegal. It is obvious that the water supply to an occupant of such an illegal hut does not affect the illegal nature of the hut. We must note here that the affidavits on record show that the electricity supply is being provided to illegal slums constructed after 1<sup>st</sup> January 2000. Thus, the occupants of such huts are made entitled to electricity supply, but not the water supply.

**20** Initially the State protected illegal slums constructed up to 1<sup>st</sup> January 1995. Thereafter, recently, the cut off date is extended till 1<sup>st</sup> January 2000. There is a failure of all the concerned to prevent the erection of the slums in the city. There is a failure to take action against the illegal slums. The past conduct of the State gives a hope to those who occupy illegal slums that the same will be regularized by the State Government in

future. Perhaps that may be the reason why people are occupying illegal slums with a hope that the State Government will come up with a new policy decision for their protection. We fail to understand as how the Authorities can commit violation of the fundamental rights under Article 21 of the Constitution of India on the ground that providing water supply to the occupants of the slums erected after 1<sup>st</sup> January 2000 will amount to encouraging to people to construct the slums or to occupy illegal slums. As stated earlier, reasons why citizens occupy illegal slums in the city of Mumbai may be totally different.

21 Hence, by way of interim relief, we issue the following directions:

- (i) We direct the Municipal Corporation of Mumbai to formulate a policy for providing water supply in some form to the occupants of the slums which have been illegally erected after 1<sup>st</sup> January 2000. The policy shall be for providing water supply to those who are occupying such slums for residential purposes;
- (ii) We make it clear that the water supply need not be necessarily by providing water lines to individual huts or individual colonies of huts;
- (iii) We also make it clear that the occupants of the slums which

have illegally come up after 1<sup>st</sup> January 2000 cannot claim a right to supply drinking water on par with a right of a law abiding citizen who is occupying lawfully constructed premises having occupation or completion certificate;

(iv) We may also make it clear that while making the provision to supply drinking water to such occupants of illegal slums, the Municipal Corporation may provide for payment of water charges at a higher rate than the rate which is charged for water supply to the authorized constructions;

(v) We direct the Municipal Corporation to formulate a policy as aforesaid as expeditiously as possible and in any event by the end of February 2015;

(vi) We make it clear that notwithstanding this order, the Municipal Authorities shall be under an obligation to take action of prevention of construction of the unauthorized slums and to take action of demolition in accordance with law in relation to the slums which are not protected and which are constructed after 1<sup>st</sup> January 2000;

(vii) We direct the Municipal Authorities to initiate action against the erring Designated Officers in terms of Section 475B of the MMC Act;

(viii) We direct the Municipal Corporation to file an affidavit of compliance on or before 2<sup>nd</sup> March 2015. Affidavit of compliance to also

state the manner in which the Municipal Corporation is going to prevent the construction of such illegal slums and the manner in which the Municipal Corporation is going to take steps for demolition of the illegal slums;

(ix) Chamber Summons (Lodging) No.362 of 2014 is made absolute in terms of prayer clause (a) thereof;

(x) Chamber Summons No.74 of 2013 is made absolute in terms of prayer clause (a) thereof;

(xi) All concerned to act upon an authenticated copy of this order.

**(A.S. GADKARI, J.)**

**(A.S. OKA, J.)**