

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10445 OF 2015

Girdhari s/o Chandanmal Agrawal,
Age: 54 years, Occ: Business,
R/o. Flat No. 14, V.K. Heights,
Anguribag, Aurangabad.

...Petitioner

versus

Aurangabad Municipal Corporatiojn
through its Commissioner,
Aurangabad.

...Respondent

.....
Mr. P.F. Patni, Advocate for petitioner
Mr. P.P. More, Advocate h/f Mr. S.S. Tope, Advocate for
respondent

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CORAM : N.W. SAMBRE, J.

DATE : 17th NOVEMBER, 2015

ORAL ORDER :

The petitioner filed Regular Civil Suit No. 46 of 2015 against planning authority i.e. Aurangabad Municipal Corporation for declaration and mandatory injunction alongwith application Exhibit-5 for grant temporary injunction directing them to remove seal of the suit shop as mentioned in paragraph-2 of the suit, which was sealed by the authority pursuant to the provisions of Section 264 of the Maharashtra Municipal Corporation Act. The said prayer for mandatory injunction was rejected by learned trial Court by order dated 19/08/2015, which was further subjected to challenge in Misc. Civil Appeal No. 142 of 2015. The appeal also came to be dismissed

by an order dated 21/09/2015. As such, present writ petition.

2. Mr. Patni, learned Counsel for the petitioner would urge that the entire action of sealing is contrary to scheme of Section 264 of the Maharashtra Municipal Corporation Act. According to him, neither any notice nor any procedure was adopted and in 2014 suit shop of the petitioner came to be sealed without drawing any panchanama, of which sealing process began in 2013. According to him, the fact that structure is sealed standing since 2013, speaks about good condition and quality of the structure which is worth in habited. In addition to above, according to him, in absence of proper notice to the owner and occupier of the property, the petitioner cannot be blamed and as such, sought mandatory injunction against the respondent.

3. Learned Counsel for the respondent-Corporation, while opposing the prayer, would urge that in view of concurrent findings recorded by both the Courts below, this Court should be extremely slow in interfering in its extraordinary writ jurisdiction in the orders passed rejecting the application. He would then urge that there is presumption in favour of official acts of the Corporation and according to him, both the orders of the Courts below speak voluminous about procedure as was adopted by the Corporation before sealing including that of issuance of notice to owner, occupier,

panchnama at the time of sealing etc. He would urge that technical officers of Corporation having certified that the premises were in dilapidated condition hence this Court should slow in sitting in an appeal over such judgment of such assessment of technical expert. He prays for dismissal of the writ petition.

4. Having given anxious consideration to the submissions made by respective parties, it is required to be noted here that both the Courts below have already taken note of procedure that was adopted by Corporation before ordering sealing of the premises in exercise of powers under Section 264 of the Act. The said Section empowers Corporation through its competent authority to secure premises, if same is in dilapidated condition. Apart from above, once Corporation exercises power by taking aid of technical expert, it will be inappropriate for this Court to reverse the findings by sitting in appeal over the judgment of expert.

5. In view of concurrent findings and power conferred to Corporation under the provisions of Section 264 of the Maharashtra Municipal Corporation Act, in my opinion, no material illegality could be noticed. No interference is called for. The writ petition fails, same stands dismissed.

[N.W. SAMBRE, J.]