

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 3646 OF 2014

Mujahid Sabirpasha Pirjade & Ors.	...	Petitioners
VS.		
The State of Maharashtra, through Secretary & Anr.	...	Respondents

Mr. Vivekanand S. Tadake, Advocate for the petitioners.
Mr. Vikas Mali, AGP for respondent no. 1.
Mr. R.S. Alange, Advocate for respondent no. 2.

**CORAM : SMT. VASANTI A. NAIK &
C.V. BHADANG, JJ.**
DATE : 12th February, 2015.

P.C.

By this Petition, the petitioners challenge the notice issued by the Solapur Municipal Corporation under section 231 of the Maharashtra Municipal Corporation Act, 1949 for removal of the shed erected by the petitioners on the footpath in between Rang Bhavan Chowk to Zilla Parishad Chowk.

It is the case of the petitioners that it is the duty of the Solapur Municipal Corporation to rehabilitate the petitioners and provide alternate accommodation to them. It is stated that the issuance of the notice by the Corporation without providing alternate accommodation to the petitioners is bad in law. The counsel for the petitioners has relied on the

judgment reported in **(2010) 5 Bom. C.R. 837** (*Mohansing Uttamsing Tanwani vs. State of Maharashtra & Ors.*) in this regard.

On hearing the learned counsel for the parties, it appears that the petitioners cannot effectively challenge the notices dated 11th December, 2013 under section 231 of the Maharashtra Municipal Corporation Act, 1949. The petitioners had filed a Civil Suit in the year 2006 for a permanent injunction restraining the Corporation from dispossessing the petitioners, who were doing their business in temporary sheds on the footpath/roadside, without following the due process of law. The suit filed by the petitioners was partly decreed and the Corporation and its authorities were restrained from dismantling the temporary sheds and structures without following the due process of law. After the suit was decreed, the respondent/Corporation has issued a legal notice under section 231 of the Act of 1949. We do not find any illegality in the said notice. Admittedly, the petitioners are not the owners, lessees or licencees of the premises in question. If that is so, the Corporation is bound to seek the possession of the property from the petitioners-encroachers by following the due process of law. If the petitioners are desirous of seeking rehabilitation, they are free to independently seek the relief. However, in the facts of the case, this Court would not direct the Corporation to rehabilitate the petitioners. The judgment reported in

(2010) 5 Bom. C.R. 837 and relied on by the counsel for the petitioners cannot be made applicable to the facts of this case. In the said case, this Court had directed the respondent/Corporation to scrutinize the claims of the petitioners, who were allotted the premises, vide resolution dated 25th November, 1954. The rehabilitation was directed only after verification of the claims of the petitioners therein. Also, in the said reported case, the petitioners were displaced from Western Pakistan and they had erected the structures on the lands belonging to the Municipal Corporation more than 60 years earlier. Such is not the case here.

In the result, the Writ Petition fails and is dismissed, with no order as to costs.

(C.V. BHADANG, J.)

(VASANTI A. NAIK, J.)