

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5112 OF 2015

Smt. Surekha Vasant Raul and Others. .. Petitioners
Vs
Thane Municipal Corporation and Others. .. Respondents
--

Shri Sagar A. Joshi for the Petitioners.
Shri Mandar Limaye for the Respondents.
—

CORAM : A.S. OKA & G.S. PATEL, JJ
DATED : 4TH DECEMBER 2015

P.C.

1. The learned counsel appearing for the Thane Municipal Corporation on instructions states that as a considerable period has elapsed from the date of issuance of notice dated 8th October 2008 under Sub-section (1)(c) of Section 268 of the Maharashtra Municipal Corporation Act, 1949 (for short “the said Act”), the said Municipal Corporation has decided to withdraw the said notice dated 8th October 2008 and to initiate a fresh action, if necessary, under the provisions of Sections 264 and 268 of the said Act after inspecting the building in question. He also invited our attention to the order of interim relief dated 7th August 2013 passed by the Court of the learned 2nd Joint Civil Judge, Senior Division, Thane in Regular Civil Suit No.477 of 2013 filed

by the Petitioners. He submitted that necessary clarification be issued that notwithstanding the order dated 7th August 2013, the Municipal Corporation can initiate a fresh action in accordance with law.

2. We have heard the learned counsel appearing for the Petitioners. We have perused the prayers made in the plaint. The plaint proceeds on the footing that the action of the Municipal Corporation of calling upon the occupants to vacate the building in question is illegal. Moreover, it is contended that without following due process of law and without complying with the principles of natural justice, the Municipal Corporation desires to demolish the said building. We have perused the order of temporary injunction dated 7th August 2013. Clause 2 of the operative part of the said order reads thus:-

“It is hereby made clear that the defendant Corporation is at liberty to take necessary decision on the basis of the chance of hearing given to the plaintiffs and the landlord, as per the directions from the Hon'ble High Court.”

3. Reference to the order of this Court in Clause 2 of the said order dated 7th August 2013 is to the order dated 15th June 2009 in Writ Petition No.734 of 2009. In the said Writ Petition, the challenge was to the notice dated 8th October 2008 issued by the Municipal Corporation. The Writ Petition was disposed of by the order dated 15th June 2009 on the basis of the concession made by the learned counsel representing

the Municipal Corporation which is recorded in Paragraph 5 of the said order which reads thus:-

“5. The learned counsel for respondent no.1 has no objection to give hearing to the petitioners along with the landlord respondent no.2 before any action is taken by respondent nos.1 on the basis of impugned notice.”

4. Now the Municipal Corporation has decided to withdraw the notice dated 8th October 2008. The notice dated 1st June 2015 which is the subject matter of challenge in this Petition cannot be enforced now in view of the aforesaid statement made by the learned counsel appearing for the Thane Municipal Corporation. The said notice dated 1st June 2015 is based on the notice dated 8th October 2008.

5. The Civil Court passed an order of temporary injunction by observing that unless the hearing is given to the present Petitioners along with the landlord in terms of the order dated 15th June 2009 of this Court, no action under Sections 264 and 268 of the said Act can be initiated. As the notice dated 8th October 2008 is withdrawn, now the statement which is recorded in Clause 5 of the order dated 15th June 2009 no longer binds the Municipal Corporation.

6. The statement of the Municipal Corporation made today is that after taking inspection of the building, appropriate action will be taken in accordance with law, if necessary, in terms of Sections 264 and 268 of the said Act. After having perused both the Sections, we find that no provision is made therein for giving an opportunity of being heard to the occupants of the building or to the owner of the building before issuing notices. As stated earlier, the order dated 15th June 2009 in Writ Petition No.734 of 2009 is based on the concession made by the learned counsel appearing for the Municipal Corporation only in relation to the notice dated 8th October 2008 which is now withdrawn.

7. In view of what is stated above, now the notice dated 8th October 2008 is withdrawn and, therefore, the notice dated 1st June 2015 subject matter of challenge in this Petition cannot be implemented by the Municipal Corporation. Therefore, cause of action for filing Regular Civil Suit No.477 of 2013 will not survive. On the basis of this order, the Municipal Corporation shall make necessary application in the pending suit to enable the learned Trial Judge to dispose of the suit.

8. Hence, we dispose of the Petition by passing the following order:

ORDER :

(a) We accept the statements made by the learned

counsel appearing for the Thane Municipal Corporation on instructions of Shri Shankar Ravji Patole (AMC), Designated Officer of Kalva Ward Committee that the notice dated 8th October 2008 stands withdrawn;

(b) In view of the said statement, the notices dated 8th October 2008 and 1st June 2015 shall not be implemented;

(c) We make it clear that this order will not prevent the Municipal Corporation from initiating a fresh action under Sections 264 and 268 of the said Maharashtra Municipal Corporation Act, 1949 after carrying out inspection of the building in question;

(d) In view of this order, the cause of action for filing Regular Civil Suit No.477 of 2013 in which the present Petitioners are the Plaintiffs does not survive;

(e) We direct the Thane Municipal Corporation to produce an authenticated copy of this order before the Trial Court along with an appropriate Application to enable the Trial Court to dispose of the pending suit;

(f) We direct the parties to appear before the Trial Court before which the said Regular Civil Suit is pending on 22nd December 2015 at 11.a.m. The Thane Municipal Corporation shall produce an authenticated copy of this order along with an Application;

(g) In the light of what is observed by this Court, the Trial Court shall pass an appropriate order on the said Application;

(h) All contentions of the parties are kept open.

(G.S. PATEL, J)

(A.S. OKA, J)