

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11026 OF 2013

1. Shri Surajmal Budmal Lodha and Anr. ...Petitioners.
V/s.
1. Pune Municipal Corporation & Ors. ...Respondents.

Mr. Jaydeep Deo for the Petitioner.
Mr. N. P. Deshpande, AGP for the Respondent No.3.
Mr. Abhijit P. Kulkarni for the Respondent Nos.1 & 2.

**CORAM : A.S.OKA &
V.L. ACHLIYA,JJ.**

DATE : 8th SEPTEMBER, 2015

P.C.:

. Heard the learned counsel for the petitioners, the learned counsel for respondent Nos.1 and 2 and the learned AGP for the 3rd respondent.

2. Considering the nature of the controversy raised in the petition, forthwith taken up for final disposal.

3. The challenge in this petition under 226 of the Constitution of India is to the notice under section 478(1) of Maharashtra Municipal Corporation Act, 1949("MMC Act" for short). The petitioners through their advocate replied to the said notice. Notice relates to a structure admeasuring 80' x 60'. In the reply, it is contended that a Regular Civil

Suit No.677/1978 was filed by the petitioners in the Court of Joint Civil Judge, Junior Division at Pune. A decree has been passed by the Civil Court holding that the notice dated 23/2/1978 issued by the 1st respondent is illegal on the ground that the structure subject matter of notice has been constructed before 1960. Moreover, the petitioners relied upon the completion certificate dated 18/8/1960 issued by the Assistant Engineer of the 1st Respondent-Municipal Corporation.

4. Learned Counsel for the petitioners pointed out that the petitioners have filed a Civil Suit which is pending. He submits that the Civil Suit may attract a statutory bar and, therefore, he has filed the present petition. He further pointed out that in the Civil Suit, the issue of jurisdiction has not been framed.

5. Learned Counsel appearing for the respondent Nos.1 and 2 urged that there was every justification for issuing the notice under section 478(1) of the MMC Act as the work carried out is without permission. He, therefore, submitted that apart from pendency of the suit, even on merits, no interference is called for.

6. We have considered the submissions. The case of the petitioners is that Regular Civil Suit No.677/1978 was filed by the 1st

petitioner against the 1st respondent-Municipal Corporation for challenging the notice issued by the 1st respondent under section 478(1) of the MMC Act for demolition of the same structure which is subject matter of this petition. By judgment and decree dated 29/4/1986, the Civil Court injuncted the 1st respondent from demolishing the structure. The contention of the petitioners is that there is a clear finding recorded in paragraph 10 of the judgment that the structure in question was constructed prior to 1960. It is contended that the decree dated 29/4/1986 has become final. Moreover, by way of reply, the petitioners have relied upon an old completion certificate of the year 1960.

7. Section 478 of the MMC Act does not provide for giving hearing to the affected parties. In the present case, the petitioners are relying upon the material to show that the structure, subject matter of the impugned notice, is not unauthorized. Sub-section 1 of section 478 of the MMC Act will apply where the construction is carried out without obtaining written permission under the MMC Act. In the present case, the stand appears to be that such written permission was not required in view of the decree passed by the Civil Court.

8. Therefore, in our view, it will be appropriate if the Municipal Corporation initiates action under section 260 of MMC Act. In fact, the

impugned notice can be treated as the one under section 260(1)(A) of the MMC Act. There is already a reply issued to the said notice. In light of the reply, now the Municipal Corporation can taken action of passing order in terms of law as laid down by a Division Bench of this Court in ***Sopan Maruti Thopte v/s. Pune Municipal Corporation, 1996 MhLJ 963.***

9. Therefore, this petition can be disposed of with the aforesaid directions. Needless to state that in view of this order, the suit filed by the petitioners will not survive and the petitioners will have to withdraw the same. Hence, the following order is passed:

ORDER

- i) We direct that the impugned notice dated 30/10/2013 issued under section 478(1) of the MMC Act shall be treated as a notice under section 260 (1A) of the MMC Act;
- ii) We direct the petitioners to appear before the designated officer of the concerned ward on 15/10/2015 at 11.00 a.m. If the petitioners wants to produce any documentary evidence, they shall produce the same on the very day before the designated officer;
- iii) After giving an opportunity of being heard to the petitioners, the designated officer shall pass an order on the said notice in light of the law laid down in the case of **Sopan**.

Maruti Thopte v/s. Pune Municipal Corporation, 1996 MhLJ 963;

- iv) A copy of the order to be passed by the designated officer be served to the petitioners;
- v) If the order be adverse to the petitioners, the same shall not be implemented for a period of 15 days from the date of service of the order upon the petitioner;
- vi) In view of this order, it is obvious that now the impugned notice cannot be acted upon under section 478(1) of the MMC Act;
- vii) The petitioners shall withdraw the Suit No.2049/2014 filed by them in the Civil Court for challenging the said notice within a period of 4 weeks from today;
- viii) All the contentions on merits are kept open;
- ix) The petition is disposed of in the above terms.

(V. L. ACHLIYA, J.)

(A. S. OKA, J.)

C E R T I F I C A T E

“ Certified to be true and correct copy of the original signed Judgment/Order.”