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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**WRIT PETITION NO.228 OF 2014**

Sunder alias Sundra Krishna Shetty  
Aged about 56 years, Occ. Busines  
Shetty Pan Shop alias Sunder Pan Bhandar  
At room No.1 and outside Room No.1  
Panbidi Stall, Manishankar Bhat  
Building No.10, M.P. Charity & Sarvodaya  
Hospital Trust, Lalbahadur Shastri Marg  
Ghatkopar (West), Mumbai 400 086

... Petitioner

Versus

1. Mumbai Municipal Corporation,  
Through its Commissioner Mahapalika Marg,  
C.S.T., Mumbai – 400001.
2. Shri Balkrishna Sale  
Assistant Engineer  
having his office at BMC  
Jawahar Marg, Ghatkopar,  
Mumbai 400 077
3. Shri Suraj Pawar  
Junior Engineer  
Having his office at BMC  
Jawahar Marg, Ghatkopar  
Mumbai 400 077
4. Mrs. Kshama Haresh Mehta  
Age 57 years,
5. Shri Haresh Vanmalidas Mehta  
Age 59 years,
6. Shri Hitesh Panalal Shah  
Age 57 years,
7. Ms. Punita Haresh Mehta

Age 38 years,  
Nos.4 to 7 are Trustees of M.P. Charity  
and Sarvodaya Hospital Trust,  
Registered under Bombay Public Trust Act, 1950,  
having its office at Lal Bahadur Shastri Marg,  
Ghatkopar (West), Mumbai 400 086

8. M.P. Charity & Sarvodaya  
Hospital Trust

Registered under Bombay Public Trust Act, 1950,  
having its office at Lal Bahadur Shastri Marg,  
Ghatkopar (West), Mumbai 400 086

... Respondents

Mr. Rupesh R. Lanjekar, for the Petitioner.

Mrs. Shobha Ajitkumar, for the Respondent Nos.1 to 3 - BMC.

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

**DATE : 14<sup>th</sup> OCTOBER, 2015**

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

. Notice for final disposal was issued on 28<sup>th</sup> July, 2015.

2. The case of the Petitioner is that he was having a Pan stall outside Room No.1 on the ground floor of building No.10 at M.P. Charity and Sarvodaya Hospital, Lalbahadur Shastri Marg, Ghatkopar. It is contended in the Petition that earlier, a notice under Section 351 of the Mumbai Municipal Corporation Act, 1888 was issued on 13<sup>th</sup> February, 1989 in respect of the same stall. It is pointed out that L.C. Suit No.49 of 1990 was filed by the Petitioner for a declaration that the said notice was illegal. By Judgment and Decree dated 18<sup>th</sup> January,

2000, the learned Judge of the City Civil Court, Mumbai declared that the said notice dated 13<sup>rd</sup> February, 1989 and order dated 1<sup>st</sup> November, 1989 passed on the basis of the said notice were illegal and the same were set aside. The Municipal Corporation was restrained from demolishing the Pan stall on the basis of the said notice and said order. The case made out in the Writ Petition and in particular paragraph 7 is that the first Respondent – Municipal Corporation did not challenge the said Judgment and Decree.

3. The grievance in the Petition is that on 19<sup>th</sup> June, 2014, the officers of the Municipal Corporation visited the site and demolished the said stall. The Petitioner is relying upon the panchanama dated 19<sup>th</sup> June, 2014 which is annexed as Exhibit-C to the Petition. The contention in the Petition is that as the said Pan stall was demolished without following due process of law, a writ of mandamus may be issued directing the first Respondent – Municipal Corporation to reconstruct the same and to take action against the erring officers. We have heard the learned counsel appearing for the Petitioner who relied upon the contents of panchanama at Exhibit-C.

4. The learned counsel appearing for the Respondents has tendered on record communication dated 13<sup>th</sup> October, 2015 sent by the

designated officer (Assistant Engineer) (B & F) - I 'N' Ward. The said communication is taken on record and marked 'A-1' for identification.

The relevant part of the said communication read thus :-

“With reference to above subject matter a call received from disaster control room on 19.06.2014 stating that some portion of the above said building has been collapsed. To safeguard the life & property of nearby structures & passerby the building under reference was demolished on 19.06.2014.

At the time of demolition it was found that one pan-shop owned by Sunder Krishna Shetty adm. About 5' x 6' obstructing the demolition process and not a part of the building but a isolated structure also demolished, by making Panchanama by breaking lock & returned the material to Sunder Krishna Shetty, Owner of the pan shop.

As the said pan-shop demolished due to obstruction of demolition process, there is no objection from this dept. to construct the same by verifying authenticity of documents on the same place, same area & of same material.”

5. We have perused the Judgment in L.C. Suit No.49 of 1990. Considering the description of the stall in paragraph 1 of the Petition and the description of the stall subject matter of the said Suit, it appears to us that both the proceedings relate to the same stall. We have carefully perused the panchanama recorded on 19<sup>th</sup> June, 2014. It records that the Municipal Corporation staff visited the spot for

demolishing a building situated behind the said stall. It records that near the said building (Manishankar Bhatt building), there was a shop of the Petitioner admeasuring 5 ft x 6 ft. It is stated that the said shop was locked. It is stated that as the said shop was coming in the way of demolition, it was necessary to demolish the same. It is stated that in presence of panchas, the lock on the stall was broken open, the stock lying inside was handed over to the Petitioner and thereafter, the same was demolished. Thus, even the panchanama records that there was no due process of law followed before demolition of the said stall. The stall was demolished only to facilitate demolition of the nearby building.

6. Now, the Municipal Corporation has recorded no objection in the communication marked 'A-1' to enable the Petitioner to reconstruct the stall at the same place at the same area and by using the same material.

7. In view of the said communication, we propose to permit the Petitioner to reconstruct the stall accordingly. However, we make it clear that grant of permission to reconstruct the stall will not confer any legality on the stall if the original stall was illegal or was required to be otherwise demolished. It will be open for the Municipal Corporation to initiate action in accordance with law in respect of the reconstructed

stall. The fact that the stall was ordered to be reconstructed will be no defence to the said action and in case such action is initiated, the Petitioner will have to satisfy the authorities that the original stall which was demolished on 19<sup>th</sup> June, 2014 was either constructed after obtaining a permission of the Competent Authority or was protected by any one of the existing policies.

8. Considering the stand taken by the designated officer and considering the fact that out of the necessity that the stall was demolished, no case is made out to initiate action against any of the Municipal officers. We dispose of the Petition by passing the following order :-

#### **ORDER**

- (i) It will be open for the Petitioner to reconstruct the stall admeasuring 5 ft x 6 ft. at the same place and by use of the similar material which was used for the construction of the original stall. The work of erection of the stall shall be carried out by the Petitioner after giving 15 days' advance notice to the designated officer of the concerned ward of the date and time to carry out the work;

- (ii) The designated officer shall depute an appropriate officer to remain present at the site. The Petitioner shall carry out the work of reconstruction in terms of this order in presence of such Municipal officer;
- (iii) We make it clear that the issue of legality of the original stall is kept open. It will be open for the Municipal Corporation to initiate appropriate proceedings in accordance with law for the demolition of the reconstructed stall. We make it clear that now that the Petitioner is permitted to reconstruct the stall will not make the stall legal if it was originally constructed without obtaining permission and the Petitioner will have to independently satisfy the Municipal Authorities that the original stall which was demolished on 19<sup>th</sup> June, 2014 was either authorisedly constructed or that it was protected by any of the existing policies;
- (iv) We also make it clear that if the Petitioner erects the stall without advance notice to the designated officer as directed above, it will be open for the Municipal Corporation to immediately demolish the said stall;

- (v) We make it clear that the reconstruction of the stall shall be at the cost of the Petitioner and he will not be entitled to seek any reimbursement from the first Respondent – Municipal Corporation;
- (vi) Prayer for initiating action against the Municipal officers for demolishing the stall is rejected;
- (vii) Rule is made absolute on above terms;
- (viii) All concerned to act upon an authenticated copy of this order.

**(VL. ACHLIYA, J )**

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