

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

Writ Petition No. 1824 of 2013

District : Aurangabad

Shaikh Babu Shaikh Mohammad,
Age : 45 years,
Occupation : Business,
R/o. Mughalpura,
Near Kohinoor Colony,
Aurangabad.

.. Petitioner.

versus

1. The State of Maharashtra,
Through the Secretary,
Urban Development and
Welfare Department,
Mantralaya, Mumbai - 32.
2. The Municipal Commissioner,
Aurangabad Municipal Corporation,
Aurangabad.

.. Respondents.

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*Mrs. Pathan, Advocate, holding for
Mr. T.W. Pathan, Advocate, for the petitioner.*

*Mr. S.N. Morampalle, Asst. Government Pleader, for
respondent no.1.*

*Mr. Girish Kulkarni, Advocate, instructed by
Mr. A.M. Karad, Advocate, for respondent no.4.*

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**CORAM : S.V. GANGAPURWALA &
A.M. BADAR, JJ.**

DATE : 1ST FEBRUARY 2016

COURT'S ORDER *(Per S.V. Gangapurwala, J.) :*

1. Mrs. Pathan, the learned Counsel for the petitioner, submits that the petitioner was running business in the name and style 'Babu Tea House' in front of main gate of the Government Medical College & Hospital, Aurangabad, since 1984, in an area of 3 X 6 feet. He was allotted the same by following due process of law, at rent of Rs. 30/- per month from 1984. As the respondent's officers threatened to dispossess the petitioner, the petitioner filed Civil Suit before the trial Court bearing R.C.S. No. 1244/1996. The said suit is decreed restraining respondent no.2 from removing the said stall without recourse to law. However, respondent no.2 was always threatening to remove and demolish the said construction. The petitioner also moved an application bearing MARJI No. 17/2011 under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908. For want of evidence, the said application is rejected. The learned Counsel submits that for the loss caused to the petitioner due to illegal action of respondent no.2 and its officers, the petitioner is required to be compensated for an amount of Rs. 90,000/- as the only source of livelihood of the petitioner is lost.

2. The learned Counsel for respondent no.2 - Corporation submits that the averments made in the petition are denied.

3. It is a matter of record, that the application filed by the petitioner under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908, was dismissed on merits.

4. Whether the respondents have demolished the construction and whether the petitioner has sustained any loss and if at all sustained, to what extent, would be all debatable issues which cannot be gone into in the present petition. The petitioner shall be at liberty to take such other steps as would be permissible in law

5. In the light of the above, the Writ Petition is disposed of. No costs.

(A.M. BADAR)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

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