

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

WRIT PETITION NO. 8190 OF 2013

Nawabkhan Fatekhan Sherkhan

..PETITIONER

VERSUS

Municipal Corporation, Aurangabad

..RESPONDENT

....

Mr. S.S. Kazi, Advocate for petitioner.

Mr. S.S. Tope, Advocate for respondent.

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CORAM : T.V. NALAWADE, J.

DATED : 21st SEPTEMBER, 2016

ORDER :

1. The petition is filed to challenge the order made in Regular Darkhast No. 1 of 2011 which is pending in the Court of Civil Judge Senior Division, Corporation Court, Aurangabad. The darkhast is itself dismissed by the Executing Court by holding that as per the decision of the Civil Court, necessary procedure was followed by the local body – corporation and so there was no question of making any order in execution proceeding on the basis of decree given in R.C.S. No. 877 of 2006. Heard learned Counsel for petitioner.

2. The aforesaid civil suit was filed by the present petitioner for injunction. He had contended that without following the due procedure

of law, the local body wanted to pull down the construction made by him on the suit property. By decision dated 29th June, 2007, the suit was decreed and injunction was granted of following nature:

“Hereby the defendant, its servant, agents are restrained to demolish the suit room without following the due procedure of law.”

3. It is not disputed that piece of land over which construction is made by the present petitioner does not belong to him. He is claiming the rights as lessee/tenant. It is not disputed that permission for making construction was not obtained from local body. In view of the aforesaid decree, the corporation followed the procedure and only after issuing notice and giving opportunity, they pulled down the structure. The Executing Court has considered the record of notice produced before it and the record shows that the petitioner has everything to avoid the action of demolition and notice was required to be pasted on the door of the construction. Panchanama prepared accordingly. Thus, even when opportunity was given, the petitioner failed to avail that opportunity and there are aforesaid circumstances against him.

4. It can be said that from the year 2006 till 2010, the petitioner some how succeeded in protecting the construction on the basis of the

order made by the Civil Court. As the construction is itself illegal and there are aforesaid circumstances, there was no room for making any order in execution proceeding filed on the basis of decree given in the suit which was filed in the year 2006. Thus there is no room to interfere in the order made by the Executing Court. In that result, petition stands dismissed.

(T.V. NALAWADE, J.)

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