

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO.6585 OF 2005

WITH

C.A.NO.8062 OF 2006

WITH

C.A.NO.8382 OF 2006.

Sunil S/o Surajmal Lodha and another Vs. The State of Maharashtra and others.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.V.R.Dhorde, advocate holding for Mr.R.L.Kute, advocate for the Petitioners.
Mr.S.M.Ganachari, A.G.P. for the State.
Mr.G.K.Naik Thigle, advocate for Respondent No.2.
Mr.S.B.Talekar, advocate for Respondent No.4.

**CORAM : S.V.GANGAPURWALA AND
K.K.SONAWANE, JJ.**
Date : 14.06.2016.

PER COURT :

1. Heard.
2. The petitioners assail the claim made by the Municipal Council, in respect of occupancy charges/rent for unauthorised occupation and the property tax levied upon the same.
3. Mr.Dhorde, learned counsel submits that prior to the issuance of the impugned demand, no notice was issued to the petitioners nor any opportunity was given to the petitioners to deny the claim made by the Respondents. The learned counsel submits

that petitioner Nos.1 and 2 have independently purchased their part of the property and are independent owners of the same. However, the impugned demand is a composite demand made to both the petitioners without specifying the extent of area allegedly encroached by the petitioners. According to the learned counsel, the Civil suits are filed by the petitioners and the civil litigation between the parties is pending, one before this Court in Second Appeal and another before the District Court. The learned counsel submits that in 2004 vague notice was issued asking the petitioners to remove the encroachment without specifying any area. Such an action is illegal.

4. Mr.Thigle, learned counsel on instructions states that prior to the impugned claim, notice was not issued to the petitioners, however, submits that for claiming rent/occupation charges for the unauthorised occupation, no notice is contemplated under the Rules and the Rules permit the Municipal Council to levy such charges for unauthorised occupation and property tax. The learned counsel submits that even the petitioners could not succeed in getting prohibitory orders from the Civil Court.

5. Mr.Talekar, learned counsel submits that in fact, the land was measured, encroachment is found. The petitioners have encroached on a large area of more than 8000 Sq. M. The said encroachment is required to be removed and the charges are rightly

claim by the Municipal Council.

6. We have considered the submissions. The Civil suit between the parties is pending in appeal. The Civil Courts naturally would be competent to decide the title as claimed by the petitioners and the extent of area the petitioners claim to be the owners. As per the Respondents, the writ lands are acquired by the Municipal Council. In the present Writ Petition we would not be dilating on the dispute with regard to the title. The present petition would be restricted to the extent of the impugned action.

7. There can not be any dispute with the proposition that as per the by-laws i.e. Model By-laws regarding temporary occupation of Public streets and open spaces including projection, the Municipal Council is authorised to charge occupancy charges/rent/penalty for unauthorised occupation.

8. It is a fact that prior to the demand being made by the Municipal Council, no notice was given to the petitioner. The said demand (Exh.M) does not state as to howmuch area either of the petitioners have independently encroached upon nor it is clear as to on what basis the Municipal Council has arrived at a conclusion of the petitioners jointly encroaching an area of 22972 Sq.ft as is claimed in the impugned demand. When charges are being claimed for unauthorised occupation, the specific area attributable to each of the petitioner having been encroached ought to have been specified.

So also it is not clear, on what basis the Municipal Council has arrived at the conclusion of the petitioners having encroached upon an area of 22972 Sq.ft. The notice is certainly vague in this regard. Considering above, it would be appropriate for the Municipal Council to first ascertain the area of encroachment as alleged by it and after putting the petitioners to notice of the same, make an assessment about the alleged occupancy charges.

9. In the result, we pass the following order :

- a) The impugned notice is quashed and set aside with liberty to the Municipal Council to claim the occupancy charges/penalty for unauthorised occupation after giving notice to the petitioners and after putting the petitioners to notice about the basis of the alleged encroachment.
- b) Our observations are limited with regard to the challenge made to the impugned demand.
- c) Accordingly, Rule made absolute partly. No costs.
- d) Civil Applications also stand disposed of.

(K . K . SONAWANE , J .)

(S . V . GANGAPURWALA , J .)

Dt.14.06.2016.

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