

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO.1743 OF 2016

P. Abdul Razzak	...	Petitioner
Versus		
The Asstt. Engineer (Maintenance)		
And Others	...	Respondents

.....

Mr. Sanjiv Sawant i/b Mr. Ketan Joshi for the Petitioner.
Ms. Kejali Mastakar for the Respondents.

.....

CORAM : S.C.GUPTE, J.

DATE : 7 JULY 2016.

P.C. :

. In the order dated 29 June 2016, the words “On the production board. Taken up.”, shall be added as the opening lines of the order.

2 This Petition challenges the Respondent-Municipal Corporation's order dated 24 June 2016, as also the demolition of the Petitioner's stall admeasuring 17.43 Sq.M., at 15th Road, Near Khar Gymkhana, Khar West, Mumbai-400 052 carried out in pursuance thereof. It is the Petitioner's case that the Petitioner duly holds a licence in respect of this stall and has been paying ground rent to the Respondent-Municipal Corporation since the year 1983. On the other hand, it is case of the Respondent-Municipal Corporation that the Petitioner does not have any licence to carry on trade at the place of the stall under Section 313 of Mumbai Municipal

Corporation Act, 1888. It is submitted by learned Counsel for the Respondent-Municipal Corporation that when the matter was produced and taken up on 29 June 2016, the Respondent-Municipal Corporation had already fully demolished the subject stall. On the other hand, it is the Petitioner's case that the stall had been only partly demolished by the Respondent-Municipal Corporation and was standing at the site when the order was passed on 29 June 2016. The submissions of both the Respondent-Municipal Corporation and the Petitioner are recorded in the order dated 29 June 2016. Now both parties, i.e. the Petitioner as well as Assistant Engineer (Maintenance) H/West Ward of the Respondent-Municipal Corporation, have filed affidavits placing on record photographs showing the respective positions asserted by them in respect of the subject stall on 28 June 2016 and 29 June 2016. The Respondent-Municipal Corporation in its affidavit has also placed the position of the stall re-erected by the Petitioner after obtaining an order from this Court on 29 June 2016. From the photographs produced by the Respondent-Municipal Corporation, it does appear that the stall was fully demolished on 29 June 2016, and in its place a new stall has been erected at the site on the following date. *Prima facie* the photographs produced by the Petitioner alongwith its affidavit of 5 July 2016 do not inspire confidence that the stall as shown in the photographs existed at the site on 28 June 2016 at 04.35 p.m. and 04.38 p.m. as suggested by the Petitioner.

3 Nevertheless, considering the fact that admittedly no hearing was given to the Petitioner before carrying out the demolition work, contrary to the circular of the Municipal Commissioner, which requires officers of the Corporation to remove stalls erected on the footpaths, without a valid

licence under Section 313 of the Mumbai Municipal Corporation Act, 1888, “by following due process of law”, in the peculiar facts and circumstances of the case, this Court is of the view that interests of justice demand that at least an *ex post facto* hearing be given to the Petitioner in respect of removal of his stall from the site and only then further action be taken in respect of the stall.

4 The Respondent-Municipal Corporation shall accordingly cause a hearing to be given to the Petitioner in respect of the demolition, which is the subject matter of the present Petition, within a period of four weeks from today. The Petitioner will be entitled to produce such documents at the hearing including any document indicating the Respondent-Municipal Corporation's policy to relocate stalls demolished in pursuance of its policy, as the Petitioner may deem fit. The Respondent-Corporation shall consider all such material in accordance with law. All rights and contentions of the parties on merits are kept open. In case the decision of the Respondent-Municipal Corporation in such hearing is against the Petitioner, the Petitioner shall cause the stall to be removed within a period of one week from the date of communication of such decision. In case the stall is not so removed by the Petitioner, the Respondent-Corporation will be within its rights to take steps by using such force as may be necessary to demolish the structure and remove the debries from the site.

5 In the meantime, till the Respondent-Municipal Corporation takes a decision after hearing the Petitioner in terms of this order, both parties shall maintain status quo at the site as is reflected in the photographs as of 30 June 2016 produced by the Respondent-Municipal Corporation with its

affidavit dated 1 July 2016 .

5 The Petition is disposed of in the above terms.

(S.C.GUPTE, J.)