

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 2830 OF 2015

M/s Ashok Commercial Company thr Partner Anil Sarda & Ano. Vs. Corporation of City of Nagpur & Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

Shri M. P. Lala Adv for petitioner.
Shri J. B. Kasat Adv for respondent.

**CORAM: SMT. VASANTI A. NAIK &
A. S. CHANDURKAR JJ.**

DATED: 27 JANUARY, 2016.

The petitioner herein challenges the notice dated 01.07.2014 issued by the respondent no.1 under the provisions of Section 81-B of the Maharashtra Municipal Corporations Act, 1949 (for short the said Act). It is the case of the petitioner that initially on 11.10.1996 the Municipal Commissioner had passed an order cancelling the licence issued to the petitioner in respect of shop No. 33. Based on the order dated 11.10.1996, a notice was issued to the petitioner on 01.11.1996 seeking possession of said shop. This notice was challenged before the Civil Court by filing Regular Civil Suit No. 2043 of 1996. The civil suit was decreed on 31.10.2003 and the respondent no.1 was restrained from giving effect to the notice dated 01.11.1996. The respondent no. 1 was also permanently restrained from evicting the petitioner without

following the due process of law. The appeal filed by the respondent no. 1 came to be withdrawn. Thereafter on 01.07.2014 the impugned notice came to be issued to the petitioner.

Shri M. P. Lala, learned counsel for the petitioner submitted that in the earlier civil suit it was found that the petitioner had not violated any terms of the licence and therefore fresh proceedings for breach of the licence were not tenable on the same cause of action. He submitted that the decree passed by the Civil Court had attained finality. He therefore submitted that the subsequent notice issued under Section 81-B of the said Act was illegal and hence the same was liable to be set aside.

Shri J. B. Kasat, the learned counsel for the respondents submitted that the challenge raised in the writ petition was only to a notice issued under Section 81-B of the said Act and the same was therefore premature. According to him it was open for the petitioner to raise appropriate defences to the impugned notice. Similarly it was also open for the petitioner to lead evidence for substantiating his case. He further submitted that the respondents could not be precluded from taking action in accordance with law.

Perusal of the decree passed by the Civil Court indicates that it was found by the trial Court that while passing order dated

11.01.1996 there was no opportunity granted to the petitioner as a result of which the petitioner could have put forth his stand. On the basis of the said order the impugned notice dated 01.11.1996 had been issued. The suit was accordingly decreed. By issuing the impugned notice the earlier shortcomings were sought to be rectified in as much as due opportunity was being given to the petitioner before taking any action. Moreover, in proceedings under Section 81-B of the said Act it is open for the petitioner to lead evidence and justify his defence. The order passed under Section 81-B of the Act can further be challenged in a statutory appeal. Considering the observations made by the Civil Court while setting aside the order dated 1.11.1996, it cannot be said that the respondents were precluded from initiating fresh proceedings. The decree passed by the Civil Court cannot be read in a manner so as to prevent the respondents from taking any action whatsoever in accordance with law. As noted above it is open for the petitioner to contest the impugned notice. The writ petition is therefore not entertained. The same is accordingly dismissed with no order as to costs.

JUDGE

JUDGE