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

WRIT PETITION NO. 7476 OF 2017

**GRAMAUDYOGIK SHIKSHAN MANDAL AURANGABAD THROUGH ITS
GENERAL SECRETARY M SHARMA**

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Sikchi Aditya N.

AGP for Respondents: Mr.P.S.Patil

Advocate for Respondents : Mr.A.P.Bhandari for R.2.

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**CORAM : S.C.DHARMADHIKARI &
MANGESH S. PATIL,JJ.**

DATE : 07/06/2017

PER COURT :-

The petitioner being aggrieved and dissatisfied by a notice stated to be issued under Section 260 of the Maharashtra Municipal Corporations Act, 1949 [hereinafter referred to as the said Act for short] and further notice u/s 487(2) of the said Act has approached this Court in its writ jurisdiction.

2] The argument of the petitioner is that it is the owner and in physical possession of a land and particularly described in the petition. The petitioner is a trust and carrying on charitable activities in the field of education from the year 1979. There are five colleges and which are managed by the trust in the city of Aurangabad in which about ten thousand students are taking education. The claim of the petitioner is that their colleges are situated on the above land/property which is stated to be abutting the Beed-by-pass road.

3] The claim of the petitioner further is that the second respondent Aurangabad Municipal Corporation has sanctioned layout of the petitioner on Gat No.72. The entire construction is as per above sanctioned layout. The respondent no.2 has accepted development charges at the time of sanctioning the layout.

4] It may be that the Aurangabad Municipal Corporation is seeking to widen the Beed-by-pass road and in terms of the designation or proposal or reservation in the Development Plan for the city of Aurangabad.

5] However, the notice under Section 260 of the said Act can at best be a show cause and calling upon the petitioner to show cause as to why action in terms of that provision on reaching requisite satisfaction be not taken. That provision according to the petitioner's counsel empowers the Commissioner to proceed against the erection of any building or the execution of any such work as is described in Section 254 of the said Act, if the same is commenced or carried out contrary to the provisions of the rules or bye-laws. The argument is that if the Corporation was implementing the proposals in the development plan it can proceed to take over or acquire the petitioner's property which it holds lawfully. By mere designation or reservation or proposal in the development plan, does not mean that the petitioner is deprived of its rights much less title and interest in the immovable property and the only mode known to law is acquisition of the same. That acquisition has to be done by exercising the powers or initiating proceedings under a statute enacted by the competent legislature. By an indirect or oblique method and in the garb of proceeding against unauthorised work or construction, the corporation cannot brush aside the above mandate and acquire the land.

6] On the other hand, Corporation's advocate has proceeded on the footing that this is not to get over the mandate of the law or the law pertaining to acquisition of right, title interest in the immovable property but to proceed against a work which contravenes the provisions of the Maharashtra Municipal Corporation Act. There is no permission or authority to make such construction as is described in the impugned notice. Therefore the provisions of Sections 260 and 478 of the said Act have been rightly invoked.

7] To be fair to the counsel for the Municipal Corporation, it is requested by him that he should be granted time to produce the record and file an affidavit of a competent official so as to justify the issuance of this notice.

8] We do not think we should grant any time to take further instructions or to file affidavit or to produce the records in the peculiar facts and circumstances of this case. The notice speaks for itself. The notice dated 15/5/2017 at page 16 of the paper book refers to Section 260 of the Municipal Corporation Act. Section 260 of the Act reads thus :

“Section 260 [1A]: If the erection of any building or the execution of any such work as is described in section 254 is commenced or carried out contrary to the provisions of the rules or bye-laws, [the Designated Officer] unless he deems it necessary to take proceedings in respect of such building or work under section 264, shall -

[a] by written notice, require the person who is erecting such building or executing such work or has erected such building or executed such work on or before such day as shall be specified in such notice, by a statement in writing subscribed by him or by an agent

duly authorised by him in that behalf and addressed to [the Designated Officer], to show sufficient cause why such building or work shall not be removed, altered or pulled down, or

[b] shall require the said person on such day and at such time and place as shall be specified in such notice to attend personally or by an agent duly authorised by him in that behalf, and show sufficient cause why such building or work shall not be removed, altered or pulled down.

[2] If such person shall fail to show sufficient cause, to the satisfaction of [the Designated Officer], why such building or work shall not be removed altered or pulled down, [the Designated Officer] may remove, alter or pull down the building or work and the expenses thereof shall be paid by the said person."

9] A bare perusal of this provision would demonstrate as to how the commissioner is empowered to initiate proceedings in respect of building or work commenced contrary to rules or bye-laws.

10] The sub Section 1 of this section which has been inserted by Maharashtra Act No.2/12 authorises the commissioner to issue a notification in the official gazette and designate an officer of the corporation to be the designated officer for the purpose of this Section and the sections enumerated in sub section 1. By sub section 1(A) the designated officer on reaching a satisfaction that erection of any building or execution of any work as is described in Section 254 is commenced or carried out contrary to the provisions of the rules or bye-laws then the designated officer if deems it

necessary to take proceeding in respect of such building or work u/s 264 shall then follow clause-(a) by written notice requiring the person who has erected such building or executed such work on or before such day as shall be specified in such notice, by a statement in writing subscribed by him or by an agent duly authorised by him in that behalf and addressed to [the Designated Officer], to show sufficient cause why such building or work shall not be removed, altered or pulled down, or shall require such person by clause-b on such day and at such time and place as shall be specified in such notice to attend personally or by an agent duly authorised by him in that behalf, and show sufficient cause why such building or work shall not be removed, altered or pulled down. Sub Section 2 is condition precedent and sets out the consequences if such person fails to show sufficient cause to the satisfaction of the Designated Officer.

11] We have before us this notice and which proceeds on the footing that the construction carried out is affected by 200 ft. wide Beed-by-pass road. According to the petitioner, the notice is not precise as to whether this construction is unauthorised/without permission but is issued in a format prescribed. It also does not state that any action would be taken immediately but a cause has to be shown by the petitioner to it.

12] Admittedly on receipt of this notice on May 25th, 2017, the petitioner addressed a communication copy of which is at Exh."C" at page 17 of the paper book.

13] The precise contention of the petitioner raised before us is squarely raised in this communication. We are also of the prima facie opinion that one cannot and more particularly as a public body with a view to develop a by pass road, bypass the law itself. Page 18 is a notice invoking Section 478(2) of the said Act. That Section reads as under :

478(2) : If within the period specified in such written notice the requisitions contained therein are not carried out by the person or owner, as the case may be, the [Designated Officer] may remove or alter such work or undo such thing and the expenses thereof shall be paid by such person or owner, as the case may be.

14] It clarifies as to how a work or thing done without written permission of the Designated officer to be deemed unauthorised. Before that section or power thereunder is invoked and sought to be exercised the satisfaction must be reached by the officer concerned that any work or thing requiring written permission of the Designated officer under any provision of the Act or any Rule Regulation or Bye-law done by any person without obtaining such written permission or

if such written permission is subsequently sought or revoked. for any reason by Designated officer then such work shall be deemed to be unauthorised. It is then capable of being removed or pulled down and if not done by owner by the Designated officer.

15] It will have to be therefore decided by a competent officer as to whether the ingredients of this provision and which are invoked are indeed satisfied. Whether sufficient cause is shown by petitioner against this notice. Moreover, the petitioner has taken nothing from his personal or private records but in the cause shown has adverted to the contents of the notice itself. The petitioner has explained that there is no work commenced or executed contrary to the provisions of the Act. The petitioner is neither an encroacher nor a person who has carried out construction unauthorisedly or without permission. The petitioner has raised specific contention that with a view to get over the provisions of the Land Acquisition Act or any law empowering acquisition of the land, the subject provision has been resorted to.

16] The petitioner may be right or wrong for all we say is that he is entitled to be heard or his case deserves to be considered. The conclusion has to be reached that the cause shown is not sufficient and therefore, it has no merit and warrants rejection. That has

admittedly not been reached. A very laudable purpose may be achieved by road widening. That construction and developing by pass road as to enable those not interested in entering the city of Aurangabad Municipal limits to reach their destination or desired place without facing any traffic, hurdles or obstacle. It is equally true that number of vehicles are increasing but vehicular population alone does not enable public bodies to resort to short cuts. A highway may be the need of the hour but the authority must understand that the Court reminds them of their statutory duties, functions and exercise of powers reasonably and in a non discriminatory manner. The Court performs its constitutional duty and is not obstructing any development project or work. The authorities seem to be under a impression that the Courts should not as a matter of course intervene in writ jurisdiction with such actions. Thus it is that alone thing and that is why at the request of the citizens and respondents we are forced to intervene because law is not adhered to, abided and followed. Every attempt is made to get over the same by resorting to shortcuts. We therefore, expect the Municipal Corporation in this case to consider the cause shown and take appropriate action after complying with the principles of natural justice which are inbuilt in these provisions. It is only thereafter that they will take necessary action warranted by law. We will not allow them to act on the notices only and by treating them as their final decision or order or

satisfaction under the statutory provisions. We therefore, direct the Municipal Corporation to consider the cause shown by the petitioner and reach a conclusion as to whether that is sufficient within the meaning of the law and whether the provisions have been rightly invoked and they have the jurisdiction, authority and power to do so. It is only thereafter that they can proceed against the work or construction at site. They shall not touch it unless they comply with the law. They can also acquire the lands by relying on the proposal, reservation and designation in the development plan as Section 22 of the MRTP Act, 1966. The development plan may be part and parcel may also contain such proposals for them to be taken to their logical end and conclusion, there are sufficient powers under Section 126 which can be resorted to. We do not think that we should remind the authorities of the law laid down by Hon'ble Supreme Court in the case of **Yogendra Pal and others V/s Municipality, Bhatinda and another With Niranjana Lal and others V/s Municipality, Bhatinda and others reported in AIR 1994 S.C.2550.** We clarify and to take care of every apprehension of the Municipal Corporation's Advocate that we have not expressed any opinion as to whether the work carried out is authorised or that due permission and approvals are

obtained by the petitioner. We have not said that it is lawful either. All contentions of both sides in that regard are kept open. The Writ Petition is allowed in those terms.

(MANGESH S. PATIL,J.)

(S.C.DHARMADHIKARI,J.)

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