

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5054 OF 2017**

Rajendra Sundarlal Parakh	... Petitioner
Vs.	
The Chief Officer, Nashik Zilla Parishad & Ors.	... Respondents

Mr.A.B. Tajane for the Petitioner
Mr.A.R. Kapadnis for Respondent No.1

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: MAY 2, 2017**

P.C. :

1. Rule. By consent of the parties, Rule made returnable forthwith.

2. This petition under Article 227 of the Constitution of India is directed against the order dated 17.3.2017 below exhibit 16 in the Regular Darkhast No.2 of 2017 in Regular Civil Suit No.147 of 2011 passed by the 4th Joint Civil Judge, Senior Division, Nasik, wherein it is prayed that the said order is to be quashed and set aside. The petitioner is the original plaintiff, who had filed a suit for declaration and injunction being Regular Civil Suit No.147 of 2011 specially against the notice dated 4.3.2011 issued by the Respondent – Zilla Parishad. The Respondent – Zilla Parishad has given a plot of land 40' x 45' on lease by agreement dated

22.3.2010 for a period of 11 years. However, the said period was not continued and the respondent sent a letter of termination of the lease on 11.2.2011. Thereafter, on 4.3.2011, the respondent sent a notice by which the petitioner was asked to remove a tin shed within 3 days thereafter. The said suit was decreed by the 5th Joint Civil Judge, Senior Division, Nasik by judgment and order dated 30.4.2016. The said order was not challenged in appeal. Thus, it became final. Thereafter, the respondent threatened the petitioner of forcible possession and, therefore, he obtained a decree which was issued on 30.4.2016, pursuant to which he filed a Regular Darkhast No.2 of 2017 and below that, on 12.1.2017, the 4th Civil Judge, Senior Division, Nasik passed the following order:

“The judgment debtors are restrained from disturbing the possession of the decreeholder over the suit property more particularly described in Schedule I annexed to this execution until further orders if already not acted as per their notice dated 23.11.2016”.

3. It is the case of the petitioner that such injunction was in force by order dated 12.1.2017 in Darkhast proceeding No.2 of 2017. The respondents dispossessed him by disregarding the order passed by the Court and thereafter, he filed application in the

said proceedings (exhibit 16) in Regular Darkhast order and he submitted that despite the judgment debtors having issued notice dated 23.11.2016 and the said notice was illegal and on the basis of that, the judgment debtors have tried to demolish the suit property and also prayed that action taken under the said notice is illegal. However, the said application below exhibit 16 i.e., Darkhast No.2 of 2017 was rejected by order dated 17.3.2017 by 4th Joint Civil Judge, Senior Division, Nasik, hence, this petition.

4. Mr.Tajane has submitted that he has a decree wherein the Defendants i.e., the respondents are restrained from dispossessing the plaintiff from the suit property on the basis of illegal notice dated 4.3.2011 issued by the respondent No.1 until due process of law is followed. He submitted that as on today, the entire shed is demolished though the defendants were restrained to take steps and thus, have violated the orders of the Court. He submitted that the suit was decreed and though he is a decreeholder, who has filed application under Order 21 Rule 32 of the Civil Procedure Code for execution, taking into account these facts, the learned Civil Judge, Senior Division ought not to have rejected the application. He relied on the judgment of the trial

Court and submitted that the trial Court at the time of decreeing the suit has held that the entry of the plaintiff was lawful, i.e., based on an agreement of lease. He submitted that the learned trial Judge has held that the earlier notice dated 4.3.2011 was illegal and therefore the respondents are expected to take a legal action by issuing notice under section 106 of the Transfer of Property Act. He submitted that the notice dated 23.4.2016 is illegal and not in consonance with section 106 of the Transfer of Property Act and therefore, the said notice is required to be stayed and the impugned order passed by the learned Judge dated 17.3.2017 is to be set aside. In support of his submission on the point of his lawful possession, he relied on the judgment of this Court in the case of **Hind Rubber Industries Pvt. Ltd. vs. Tayebhai Mohammedbhai Bagasarwalla & Ors.**¹ Mr. Tajane had also submitted that though the premises is demolished, the plot i.e., 40' X 45' is still there and that is to be protected as the agreement with the Zilla Parishad was in respect of open plot.

5. The learned Counsel for the Respondent/Zilla Parishad while opposing this petition has pointed out certain important facts and

1 1996 (4) Bom. C.R. 414

also the orders. It was argued that the notice dated 23.11.2016 was not issued under section 106 of the Transfer of Property Act but it is a notice under section 200 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961. He submitted that the Zilla Parishad has every power and authority to remove the obstruction and encroachment on the land of the corporation. He submitted that the Court has directed the Zilla Parishad to follow the due process of law. He relied on the said notice. He submitted that in the said notice, the petitioner was given a period of 30 days for shifting and vacating the unauthorised construction. He further relied on the panchanama dated 12.1.2017. He submitted that pursuant to the said notice, the entire illegal construction of plywood and tin with tiled flooring is demolished. He submitted that the panchanama discloses that the petitioner has himself shifted all the articles from the said premises. He produced the photographs and he said that the petitioner has himself put up a board that they have shifted to some other place and nothing survives in this matter and so, the suit has become infructuous.

6. Perused all the documents, the impugned orders and the two notices. It is not disputed that the notice dated 4.3.2011 was held

as illegal and as the said notice was under challenge in Suit No.147 of 2011, the said suit was decreed. The Court has directed the respondents to follow the due process of law and the entry of the petitioner was lawful on account of the lease agreement of 22.3.2010. However, the said agreement was not further renewed or continued. Earlier, one letter was given by the Zilla Parishad to the petitioner regarding unauthorised construction and shed. In the impugned judgment in Suit No.147 of 2011, the learned Judge in para 27 has observed that as on date, the plaintiff is in unauthorised occupation of the suit property, however, it was held that no sufficient time was given and there was no proper compliance of eviction notice under section 106 of the Transfer of Property Act, so notice was illegal.

7. It is to be noted that the notice dated 23.11.2016 is not a notice under section 106 of the Transfer of Property Act but the Zilla Parishad has adopted another mode under the Act to remove the obstruction and the encroachment and the said notice is not challenged in the suit, as it constitutes a separate cause of action. As the occupation of the plot by the petitioner is unlawful, the Zilla Parishad has rightly take recourse to the Maharashtra Zilla

Parishads and Panchayat Samitis Act, 1961. It is true that in the notice, the said provision is not mentioned, however, the Zilla Parishad has mentioned in the notice. In the notice, it is called upon him to remove the encroachment and also a period of 30 days was given. I am of the view that the period of 30 days is reasonably a good period with sufficient time to vacate the premises and the legality of the said notice is not challenged.

8. The submissions of Mr.Tajane cannot be appreciated as notice was for removal of encroachment and such mode is available to the Corporation. The photographs and panchanama disclose that the structure was demolished. All the electronic gadgets and goods were removed by the petitioner from the said premises and as on today, the Zilla Parishad has put its board that it belonged to the Zilla Parishad. Thus, it shows that this petitioner has lost his possession.

9. In the case of **Hind Rubber Industries Pvt. Ltd. (supra)**, the Court was in respect of section 108(e) of the Transfer of Property Act, where tenanted premises was destroyed in a fire accident and therefore, the Court held that once the landlord has admitted that the respondent was a tenant then, the destruction of

a tenanted structure, does not extinguish the tenancy and the right of occupation of the tenant under the contract of tenancy continues to exist between the parties. However, this ruling is not applicable to the present petition as the facts are totally different and the notice dated 23.11.2016 is not under section 108(e) of the Transfer of Property Act but the notice is given under section 200 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961. There is no such contract of lease existing between the parties after 2011.

10. It appears from the record that the Zilla Parishad has followed due process of law and, therefore, that fact is considered by the learned executing Court and thus, it cannot be faulted with. Hence, the petition is dismissed.

MRIDULA BHATKAR, J.)