

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 11177 OF 2016

Pushpa Jayprakash Manjarekar ... Petitioner.

Versus

The State of Maharashtra
and another ... Respondents.

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Mr. Ashish Dubey a/w Mr. Waquar Ahmed for the Petitioner.

Mr. A. I. Patel, AGP for Respondent No.1.

Mr. Prakesh Bhatkar for Respondent No.2.

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**CORAM : Smt. Vasanti A Naik &
Riyaz I. Chagla, JJ.**

DATE : 07th December, 2017.

P.C. :

By this writ petition, the petitioner seeks a declaration that the action of the respondent- no.2-Ratnagiri Municipal Council of demolishing the house occupied by the petitioner is illegal. The petitioner seeks a direction against the respondent- no.2-Ratnagiri Municipal Council to permit the petitioner to repair her house, bearing house no.3466.

It is stated on behalf of the petitioner that though by the notice dated 22.03.2016 served by the Ratnagiri Municipal Council on the petitioner, the petitioner was directed to demolish the illegal construction within one month or else the same was liable to be demolished by the Ratnagiri Municipal Council, without waiting for the period of one month, the Municipal Council

demolished the structure of the petitioner within seven days from the issuance of the notice. According to the petitioner, the action on the part of the Municipal Council to demolish the house of the petitioner after seven days though thirty days notice was served on the petitioner, is bad in law.

The learned counsel for the Municipal Council submitted that the house does not belong solely to the petitioner and the suit pertaining to the partition and separate possession is pending in the civil Court. It is submitted that there are several co-owners and co-sharers in the house property. It is submitted that since the petitioner is making illegal construction, five co-sharers/co-owners of the house property had made an application to the Municipal Council on 23.03.2016 that the house should be demolished. It is submitted that the action for demolition of the property is taken in pursuance of the representation made by the other five co-sharers. It is however submitted that if the petitioner makes an application for repairs of the house and furnishes all the relevant documents, the Municipal Council would decide the application in accordance with law.

The learned counsel for the petitioner states that the trial Court has partially decreed the suit filed by one of the co-sharers and it is held that the petitioner has half share in the suit property. It is stated that the trial court has also rejected an application made by some of the alleged co-sharers for restraining the petitioner from repairing the property. It is stated that these aspects of the matter should be considered by the Municipal Council while deciding the application for repairs.

In the circumstances of the case, it would not be proper to consider granting a declaration in exercise of the writ jurisdiction that the action on the part of the Municipal Council of demolishing the structure of the petitioner is bad in law. The petitioner is not the exclusive owner of the house property and if the other alleged co-owners had made an application to the Municipal Council for demolition of the structure, the correctness or otherwise of the action of the Municipal Council in demolishing the structure after seven days could be decided in appropriate proceedings where evidence could be tendered. By keeping the said issue open, it would be necessary to consider granting the second prayer made by the petitioner for a direction to the Municipal Council to decide the application of the petitioner for permission for reconstruction-repairs of the premises.

Hence, we dispose of the writ petition with a direction against the Municipal Council to decide the application made by the petitioner for reconstruction-repairs of the house property in accordance with law. It is needless to mention that it would be necessary for the petitioner to make the application in the proper form and submit the necessary documents for seeking permission for reconstruction-repairs of the house property, as required by the Municipal Council. The application made by the petitioner for reconstruction-repairs should be decided by the Municipal Council positively within three months from the receipt of the same. Order accordingly. No costs.

(Riyaz I. Chagla J)

(Smt. Vasanti A Naik, J)