

BDPSPS

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

WRIT PETITION NO.7591 OF 2017

Mohammed Afroz Usman Shaikh Petitioner.

V/s

Bhiwandi Nizampur City Municipal
Corporation and Others Respondents.

Mr. Abhijit Kandarkar i/b Mr. Devendra D. Pawar, Advocate for the
Petitioner.

Mr. N.R. Bubna, Advocate for Respondent Nos. 1 and 2.

**CORAM: B. R. GAVAI &
M.S. KARNIK, JJ.**

DATE: 21st August, 2017

P.C.:-

1] Rule. Rule is made returnable forthwith. Respondents waive
service. Heard by consent of parties.

2] Petitioner has approached this Court praying for a direction to
the Respondents – Corporation to forthwith demolish the
unauthorized construction carried out by Respondent Nos. 3 to 5 on
the property mentioned in the Petition.

3] It appears that this is a second round of litigation. In an earlier round i.e. in Writ Petition No.4382 of 2016, the Court had recorded statement of the Corporation on 15/02/2017 that on Monday, the Corporation would take necessary steps for giving effect to the order already passed by the Corporation. It appears that, however, since this was not done, Petitioner has approached this Court. It further appears that when further order was passed by this Court in the present matter on 19/07/2017, the Court directed the Municipal Commissioner to file an affidavit as to why the order was not complied with.

4] It appears from the record that after the order was passed by this Court on 15/2/2017 in Writ Petition No.4382 of 2016, suit came to be filed in respect of the suit property. In the said suit, an order of interim injunction restraining the Respondent – Corporation from demolishing the suit property came to be passed. By an earlier order, this Court had directed the Corporation to file an affidavit as to why steps were not taken for demolition from 15/02/2017 till 20/02/2017. In response to the said direction, in the affidavit filed on behalf of the Corporation, it is stated that during that period most of the staff of the Municipal Corporation was deputed to Ulhasnagar Municipal Corporation for conducting its election. Mr. Bubna, learned Counsel for the Corporation further submits that the Corporation took steps to get the interim injunction vacated and, consequently, on 14/08/2017, interim injunction has already been vacated.

5] In that view of the matter, we feel that the following order would sub-serve the interest of justice:-

(i) Respondent – Corporation is directed to carry out demolition prior to 10/09/2017. For that purpose, if police protection is required, Respondent – Corporation shall apply to Police Authorities and Police Authorities shall provide necessary protection to the Corporation for demolition of the unauthorized construction.

(ii) Rule is made absolute in the aforesaid terms.
No order as to costs.

(M. S. KARNIK, J.)

(B. R. GAVAI, J.)