

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

WRIT PETITION NO.8402 OF 2017

Sunil Gurunath Revankar & Ors. .. Petitioners
Vs
Pune Municipal Corporation & Ors. .. Respondents

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Mr. Shriniwas Sudhir Patwardhan for the Petitioners.
Mr. A. P. Kulkarni for the Respondent No.1.
Mr. Rahul Shivaji Kadam for the Respondent No. 4.

***CORAM : A. S. OKA &
SMT. VIBHA KANKANWADI, JJ.***

DATE : 02/08/2017.

PC. :

1] The learned counsel appearing for the Pune Municipal Corporation on instructions of Shri Khole Dhananjay, Junior Engineer states that there is an occupation certificate granted in respect of premises No. 301, 302 and 303 on the 3rd floor of the subject building on 2nd February 2016 and that the Petitioner is in possession of the said three premises. On instruction he further states that as the Petitioner was in possession of the said three premises in respect of which the occupation certificate was granted and as the Petitioner was not granted an opportunity of being heard before passing order dated 14th June 2017 of revocation of permission, the Municipal Corporation will withdraw the order dated 17th May 2017 and the notice dated 21st July 2017 Exh. 'O'. He states that on the date fixed for hearing, the Petitioner and all other concerned persons will be heard on the issue of revocation of development permission granted on 28th January 2016. He states that after giving an opportunity of being heard to the Petitioner and all other

concerned persons, appropriate order will be passed by the appropriate officer of the Pune Municipal Corporation. The learned counsel appearing for the 4th Respondent invited attention of the Court to various orders passed by National Green Tribunal, Western Zone Bench at Pune on application made by the 4th Respondent. His submission is that the revocation of permission has been made in exercise of the powers under Section 258 of the Maharashtra Municipal Corporations Act, 1949 on the ground of suppression of material facts and therefore, no interference is called for.

2] It is not in dispute that the Petitioner was in possession of premises No. 301, 302 and 303 in the subject building on 17th May 2017 when order of revocation of development permission was passed. It is also not in dispute that in respect of premises No. 301, 302 and 303, the Pune Municipal Corporation had granted occupation certificate on 2nd February 2016. Therefore, the rights of the Petitioner are affected by the impugned order of cancellation of development permission. Therefore, the learned counsel appearing for the Pune Municipal Corporation was right when he stated that hearing will be given to the Petitioner.

3] We have perused the orders passed by the National Green Tribunal. The orders obviously mean that Pune Municipal Corporation was expected to take action in terms of the said order by following due process of law.

4] It appears from the impugned order dated 17th May 2017 that action of cancellation of development permission has been taken under Section 258 of the Maharashtra Municipal Corporation Act, 1949. Therefore, by accepting the statement made by the learned counsel appearing for the Pune Municipal Corporation, we pass the following order:-

ORDER

- 1) The impugned order dated 17th May 2017 (Annexure 2 Exh. M) and the impugned notice dated 21st July 2017 (Exh. O) are hereby set aside only on the ground that opportunity of being heard was not granted to the Petitioner;
- 2) We direct the Petitioner to appear before the City Engineer of the Pune Municipal Corporation on 11th September 2017 at 11.00 am. The City Engineer shall issue notices to all other parties who are required to be heard calling upon them to remain present at the time of hearing. As the Petitioner is aware of the grounds on which Municipal Corporation proposes to cancel the Development Permission, it is not necessary to serve any show cause notice to the Petitioner. However, the Petitioner will be entitled to file written reply on the date fixed for the hearing;
- 3) After giving an opportunity of being heard to all the concerned parties, appropriate order shall be passed by the City Engineer on the basis of the notice date 5th October 2016 as expeditiously as possible and in any event, within a period of two months from 11th September 2017. All contention of the parties on merits are kept open;
- 4) The orders passed be communicated to the Petitioner and all the concerned parties;
- 5) If adverse action is to be taken against the Petitioner on

the basis of the order which may be passed by the City Engineer, the same shall be not be taken for a period of 15 days from the date on which a copy of the order is served to the Petitioner;

- 6) The petition is disposed of on the above terms. All concerned to act on an authenticated copy of this order.

(SMT. VIBHA KANKANWADI, J.)

(A. S. OKA, J.)