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

WRIT PETITION NO. 11472 OF 2017

Mahendraprasad Achhehelal Gupta ... Petitioner
Versus
Bhiwandi Nizampur City Municipal ... Respondents
Corporation & Ors.

Mr. Devendra B Shukla, for the petitioner.
Mr. N.R. Bubna, for Respondent No.1.
Mr. A.P. Vanarase, AGP for the State.

**CORAM: SMT. VASANTI A NAIK AND
MR. RIYAZ I. CHAGLA, JJ.**
DATED: 16TH NOVEMBER 2017

PC:-

By this writ petition, the petitioner seeks a declaration that the respondent – corporation does not have any authority in law to initiate action of removing the construction of the building, a part of which is occupied by the petitioner by purchasing the same for a valuable consideration.

It is stated on behalf of the petitioner that in writ petition bearing no. 5283 of 2016, the petitioner therein, Zuber Ahmed had sought for a direction against the respondent – corporation to remove the unauthorised construction of the building, that was constructed by the respondent nos. 2 and 3 to the said writ petition. It is stated that this court had directed the corporation to take appropriate steps in accordance with law after examining the grievance of the petitioner in the said writ petition. It is stated that though this court had directed the corporation to hear the

respondent nos. 2 and 3 in the said writ petition, a direction to hear the present petitioner and some others who reside in the same building and who could have been affected by the said order was not granted. It is stated that since the petitioner was not granted any opportunity to show cause as to why the premises in which the petitioner is residing should not be demolished, it would be necessary to restrain the respondent corporation from taking any action for demolition, unless the petitioner is heard.

Shri Bubna, the learned counsel for the respondent corporation states that since the court had directed the corporation to take action in respect of the demolition of the concerned building in accordance with law, the corporation had decided to demolish the building as the respondent nos. 2 and 3 to the previous writ petition were not able to produce documents to support that the construction was legal and authorised. It is admitted that a notice was not served on the present petitioner and the other occupants, though the same was served on the respondent nos.2 and 3 to the earlier writ petition. It is fairly admitted that a separate notice was not served on the present petitioner before the corporation decided to demolish the building.

In the circumstances of the case, the corporation would not be justified in demolishing the building in which the petitioner resides after purchasing a part of the same for a valuable consideration, without hearing the petitioner. It is conspicuous to note that to the earlier petition filed by Shri Zuber Ahmed, the petitioner was not a party respondent. The developer and the owner must have lost interest in the matter after the flats in the

concerned building were transferred to the petitioner and some others. In this background, it was necessary for the corporation to have served the notice on the petitioner before deciding to take action of demolition of the entire building, a part of which was occupied by the petitioner after purchasing the same. In the circumstances of the case, it would be necessary to partly allow the writ petition and pass an order restraining the respondent corporation from taking any adverse action against the petitioner without following the principles of natural justice.

Hence, for the reasons aforesaid, the writ petition is partly allowed. It is hereby held that the respondent corporation would not be entitled to demolish the part of the building in which the petitioner is residing without granting an opportunity to the petitioner to show cause. The respondent corporation should take appropriate steps in accordance with law only after granting an opportunity to the petitioner to furnish documents in support of his case. The writ petition is disposed of in the aforesaid terms with no order as to costs.

(RIYAZ I. CHAGLA J.)

(SMT. VASANTI A. NAIK, J.)