

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

WRIT PETITION NO. 10266 OF 2017

Mujibur Rehman Haji Israr Alam Siddiqui .. Petitioner

v/s.

Vasai-Virar City Municipal Corporation .. Respondent

Mr. G.S. Godbole a/w B.P. Pandey i/b Vivek B. Pandey for the petitioner

Mr. Atul Damle, Senior Counsel a/w Ms. Swati Sagvekar for the respondent

CORAM : M.S. SANKLECHA, J.

DATED : 21st SEPTEMBER, 2017

P.C.

1. This petition is moved for urgent reliefs by the petitioner. The urgency is that the petitioner's goods i.e. building materials are exposed to nature and likely to be damaged. This only in view of the respondent no.1 Corporation having demolished the petitioner's structure inspite of an injunction order of the Court. The petitioner has challenged the orders dated 23rd August, 2017 and 6th September, 2017 of lower Courts not taking action immediately against the respondent for breach of injunction order dated 27th June, 2017. All that the petitioner seeks is that he be allowed to construct

a temporary shed on the suit property till this petition is taken up for consideration.

2. By order dated 27th June, 2017, the Joint Civil Judge, Junior Division had restrained the respondent Corporation by an ad-interim injunction from demolishing the structure on the suit property at Rajewadi, Palghar, without following the due process of law. In spite of the aforesaid order, it is the petitioner's case that on 11th July, 2017 and 27th July, 2017, the respondent Corporation without following due process of law demolished the structure standing on the suit property.

3. In the above view, the petitioner moved the application being Application No.41 of 2017 under Order XXXIX Rule 2A of the Civil Procedure Code (Code) before the trial Court. The above application was filed seeking a declaration that the respondent Corporation and its officers have disobeyed the injunction order passed by this Court and also directing the respondent Corporation by mandatory order to reconstruct the entire structure on the suit property as in existence prior to demolition on 11th July, 2017 and 27th July, 2017, at the cost

of respondent Corporation. In the alternative, it is prayed that the petitioner be allowed to reconstruct the structure and recover the cost and expenses for the same from the respondent Corporation.

4. By order dated 23rd August, 2017, the trial Court has framed the following issue on the aforesaid application under Order XXXIX Rule 2A of the Code :-

Whether the defendant (respondent) has disobeyed the injunction order dated 27.06.2017 passed by the Joint Civil Judge, Junior Division in RCS No.295 of 2017 below Exh.5 ?

The parties were directed to lead evidence in support of their case.

5. Instead of leading the evidence, the petitioner filed an appeal from the order dated 23rd August, 2017 to the District Judge seeking mandatory ad-interim injunction directing reconstruction of the structure on the suit property. The appeal Court by its order dated 6th September, 2017 did not interfere with the order dated 23rd

August, 2017 of the trial Court at the ad-interim stage. This for the reason that no *prima facie* case was made out and also in view of the fact that the application under Order XXXIX Rule 2A of the Code was pending disposal before the trial Court.

6. Mr. Godbole, learned Senior Counsel appearing for the petitioner states that in view of the structure being demolished, the petitioner's goods namely; building and construction material are exposed to the elements of nature are likely to be damaged. Thus, some measures be adopted to protect its goods till the hearing of this petition for admission.

7. After hearing learned Counsel for the petitioner as well as the respondent Corporation, the consensus arrived at was :-

(a) the petitioner to withdraw its appeal filed in the District Court from order dated 23rd August, 2017 of the trial Court, being being Misc. Civil Appeal for Order No.81 of 2017;

(b) the trial Court which has already framed the issue on 23rd August, 2017 is directed to expeditiously complete the inquiry into the question whether the respondent had disobeyed the injunction

order dated 27th June, 2017;

(c) for the expeditious disposal of the petitioner's application, the petitioner states that he will file his evidence affidavit by 27th September, 2017. The cross-examination, if any, to be completed as expeditiously as possible. The respondent Corporation also to file its affidavit evidence expeditiously; and

(d) the respondent will co-operate with the early disposal of the petitioner's application.

8. In the above view, the trial Court is directed to dispose of the petitioner's application being Application No.41 of 2017 dated 29th July, 2017 as expeditiously as possible and preferably on or before 28th October, 2017.

9. In view of the above, the petitioner states that nothing survives in the petition. Accordingly, the petition is disposed of in the above terms.

Parties to act on a copy of this order duly authenticated by the Associate of this Court.

(M.S. SANKLECHA, J.)