

Sharayu Khot.

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

WRIT PETITION NO. 1016 OF 2018

Shri Mohd. Jamal Raza Hayat Ali Sayyed ...Petitioner

Versus

**The Commissioner,
Bhiwandi Nizampur City Municipal
Corporation & Ors.**

...Respondents

Mr. Ashok Sitaram Pandire, for the Petitioner.

Mr. Manoj J. Bhatt, for the Respondent No. 1.

Mr. A.A. Siddiqui & Mr. Sajid Qureshi, for the Respondent No. 2.

**CORAM : ABHAY S. OKA AND
RIYAZ I. CHAGLA, JJ.**

DATE : 2 April 2018

ORDER :

1. Heard the learned Counsel appearing for the Petitioner, the learned Counsel appearing for the 1st Respondent and the learned Counsel appearing for the 2nd Respondent.

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April 2, 2018

2. The grievance made in this Petition under Article 226 of the Constitution of India is as regards the failure of the Bhiwandi Nizampur City Municipal Corporation to demolish illegal building. We find from the averments made in the Petition and annexures to the Petition that due process of law under Section 260 of the Maharashtra Municipal Corporations Act, 1949 (for short "*the said Act of 1949*"), has been followed by declaring the subject structure as illegal.

3. The learned Counsel appearing for the 1st Respondent pointed out that a Civil Suit (Regular Civil Suit No. 467 of 2016) has been filed by the 4th Respondent in the Civil Court at Bhiwandi in which Application for temporary injunction was made which was rejected by the Trial Court. Being aggrieved by the said order, Miscellaneous Civil Appeal No. 109 of 2017 has been preferred by the 4th Respondent in the District Court in which there is an *ad-interim* order of *status quo* which prevents the 1st Respondent from demolishing the building.

4. In view of the aforesaid statements, the Petition need not be kept pending. As and when *ad-interim* order is vacated, the Municipal Corporation is bound to take action of demolition of the subject structure in accordance with law.

5. If the Petitioner finds that even after an *ad-interim* relief is vacated, no action is taken by the Municipal Corporation, he can always file appropriate proceedings in accordance with law.

6. Subject to what is observed above, we dispose of the Writ Petition. We however, make it clear that we have made no adjudication on merits of the Suit and pending Appeal and all questions therein are kept open.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]