

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3814 OF 2018

Master Harsh Kiran Katariya. ... Petitioner.
V/s.
Nashik Municipal Corporation and another. ... Respondents.

Mrs.Aneeta Kiran Kataria for the petitioner.
Ms.Chaitradi Deshmukh for respondent No.1.
Mrs.R.A.Salunkhe, AGP for respondent No.2.

CORAM : A.S.OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 6th April 2018.

P.C.:

Not on board. Taken up on board.

2. Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the first respondent and the learned AGP representing the second respondent. Prayer (c) is the only substantive prayer wherein there is a challenge to the resolution dated 4th January 2017 passed by the first respondent- Nashik Municipal Corporation. It is not in dispute that the petitioner has filed appropriate proceedings before the State Government for challenging the said resolution and the said proceedings are pending. In view of pendency of the said proceedings, it would not be proper to entertain this writ petition under Article 226 of the Constitution of India.

3. Our attention is invited to the notice dated 9th March 2018 at page 36 of the petition. The said notice has been issued threatening action under sections 81B and 81C of the Maharashtra Municipal Corporations Act, 1949 (for short “the said Act of 1949”). It is obvious that without following the procedure laid down in the said provisions, the Municipal Corporation cannot evict the petitioner and cannot recover the damages from the petitioner. Even if the orders are passed under sections 81B and 81C, there is a remedy of appeal under section 81F of the said Act of 1949. Moreover, even if the order of eviction is passed under section 81B, as per sub-section (6) of section 81B of the said Act of 1949, the Municipal Corporation will have to grant time of one month to the petitioner to vacate the premises from the date of service of the order of eviction. Therefore, there is no basis for the apprehension that immediately on the basis of the notice dated 9th March 2018, the petitioner will be evicted.

4. Subject to what is observed above, the petition is disposed of.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)