

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 4859 OF 2016**

Ramesh S. Parmanandani

....Petitioner

Versus

Ulhasnagar Municipal Corporation through
The Commissioner and Ors.

....Respondents

Mr. N.R. Bubna for the petitioner.

Mr. Suresh M. Kamble for Respondent Nos.1 to 3.

Mr. Manoj Mohnani i/b. Mr. Keshav Borhade for R.No.6.

***CORAM : A.S. OKA &
P.N. DESHMUKH, JJ.******DATE : 12TH JANUARY, 2018*****ORAL JUDGMENT (Per A.S. OKA, J.) :-**

1. By an order dated 15th December, 2017, parties were put to notice that this petition will be taken up for final disposal at the admission stage.

2. The factual controversy involved in this petition is very narrow. According to the case of the petitioner, he was the owner of shop no.712, admeasuring 20 feet x 3 inches and 10 feet x 6 inches, near RKT College, Kalyan-Ambernath Road, Ulhasnagar – 421003. The petitioner was running a cake shop. According to the case of the petitioner, the said shop was demolished without following due process of law. It is pointed out that the petitioner was not

compensated in any manner either by grant of monetary compensation or by allotment of an alternate shop.

3. Another contention raised in the petition is that at the place where the shop was situated, the respondent no.6 has started construction work and has carried out illegal construction. The first prayer in this petition seeks a Writ of Mandamus directing the Ulhasnagar Municipal Corporation to provide alternate accommodation and/or to pay monetary compensation. The second prayer is for Writ of Mandamus directing the Ulhasnagar Municipal Corporation to demolish unauthorized construction consisting of ground plus two floors made by the respondent no.6. The petitioner is relying upon the photographs of his shop and the notices issued by the Ulhasnagar Municipal Corporation. Reliance is also placed on the panchnama drawn by the officers of the Ulhasnagar Municipal Corporation at the time of demolition. Reliance is also placed on a letter dated 08th December, 2015 by which the petitioner applied to the Municipal Commissioner for grant of alternate shop.

4. There is an affidavit-in-reply filed by Shri. Nandlal Satramdas Samtani, Assistant Commissioner of the concerned ward. In the affidavit-in-reply it is contended that the notices were served on the petitioner on 16th September, 2013 ; 30th May, 2015 and 30th November, 2015 calling upon the petitioner to remove the structure on the ground that it was affected by the road widening work. It is stated that the road is being widened and developed by the Mumbai

Metropolitan Region Development Authority (MMRDA). It is pointed out that even the respondent no.6 was served with a similar notice. Reliance is placed on Resolution No.60 of the General Body of the Ulhasnagar Municipal Corporation dated 11th December, 2015 which incorporates a scheme of rehabilitation for the holders of the structures which are demolished in road widening. Reliance is also placed on a notice under section 478 of the Maharashtra Municipal Corporations Act, 1949 issued to the respondent no.6 on 17th February, 2016. To the said affidavit, a copy of the judgment and order dated 16th December, 2015 passed by this Court in Writ Petition No. 12090 of 2015 and other petitions has been annexed which have been disposed of on the basis of the said Resolution No.60 dated 11th December, 2015. A copy of the said resolution has been annexed to the petition. There is a further affidavit filed by the Assistant Commissioner of the Ulhasnagar Municipal Corporation in which it is contended that the petitioner did not produce evidence of his ownership. It is also stated that on 20th December, 2017, the Municipal Corporation has applied under section 451 of the Maharashtra Municipal Corporations Act, 1949 (for short "the said act of 1949") for rescinding the said Resolution No.60. It is pointed out that the area falling within the limits of the said Municipal Corporation is only 13 sq. kms and therefore, it is not possible to provide alternate accommodation. There are affidavits filed on record by the respondent no.6.

5. The submission of the learned counsel appearing for the petitioner is that, on one hand, after demolishing the shop of the

petitioner without following due process of law, the petitioner has not been offered alternate accommodation in terms of the Resolution of the Municipal Corporation and on the other hand, no action has been taken though the respondent no.6 has constructed an illegal structure at the place at which the petitioner's shop was in existence. His submission is that, therefore, relief in terms of prayer clause (a) be granted of directing the Municipal Corporation to remove the structure erected by the respondent no.6. The learned counsel appearing for the Municipal Corporation submitted that though Resolution No.60 dated 11th December, 2015 stands, the application made by the Municipal Commissioner for rescinding the same is still pending. He submitted that there are no plots or premises available with the Municipal Corporation and therefore, the Commissioner has applied under section 451 of the said Act of 1949. On instructions, he stated that there is no construction made at the spot at which the petitioner's shop was in existence.

6. The learned counsel appearing for the respondent no.6 submitted that the said respondent has not constructed any structure on the plot of land where the petitioner's shop was situated. He pointed out that other contentions have been raised by the respondent no.6 in the two affidavits filed by him about the right of the petitioner.

7. We have given careful consideration to the submissions made. Even the Municipal Corporation has not disputed that the petitioner was having a shop. In fact, the stand of the Municipal Corporation is

that the shop was in existence and at the time of demolition of the shop, panchnama was drawn on 05th December, 2015 showing that the petitioner's cake shop was having area of 20 feet - 03 inches x 10 feet - 06 inches (212.62 sq. feet). It is admitted that the shop was demolished for widening of Kalyan-Ambernath Road. A copy of the panchnama is at page 16 of the petition. The contention of the Municipal Corporation is that due process of law has been followed. The notices issued by the Municipal Corporation are on record. There are three notices of 16th September, 2013 ; 30th May, 2015 and 30th November, 2015. All that the notices say is that the MMRDA had called upon the Municipal Corporation to demolish the encroachments on the road and necessary marking has been made by the Town Development Department of the Municipal Corporation. It has stated that the demolition is required to be carried out for widening of Kalyan-Ambernath Road. None of the three notices even allege that the shop in which petitioner was carrying on business was illegal or that there was any illegality associated with the structure of the shop. It is not the case of the Corporation that the due process of law as contemplated by either the said Act of 1949 or the Maharashtra Regional and Town Planning Act, 1966 was followed. Therefore, taking the case of the Municipal Corporation as pleaded in the affidavits filed on record and taking the contents of the notices as correct, it is obvious that the Municipal Corporation has not at all followed due process of law before demolishing the petitioner's shop. It is only on the basis of the requirement of the MMRDA that an action of demolition has been taken.

8. Now, we turn to the affidavit filed by Mr. Ajit Ratna Gowari, Assistant Commissioner of the concerned ward. As stated earlier, reliance is placed on the Resolution No.60 of the General Body by stating that if the petitioner is found to be eligible, he shall be rehabilitated according to the said Resolution. Thus, there is a solemn statement on oath which gives a categorical assurance to the petitioner that he will be rehabilitated in terms of the said Resolution. To the said affidavit, a copy of an order dated 16th December, 2015 passed by this Court in Writ Petition No.12090 of 2015 has been annexed. It will be necessary to make a reference to what is stated in paragraph 1 of the said order which reads thus :-

“ 1. Heard the learned counsel for the petitioners. The learned senior counsel for Ulhasnagar Municipal Corporation has placed on record a copy of the Resolution No.60 dated 11th December 2015 passed by the General Body of the Ulhasnagar Municipal Corporation. He states that the said Resolution records that the persons whose structures have been demolished for widening of Kalyan-Ambernath Road will be rehabilitated in terms of the said Resolution. The Resolution provides that in case of the persons whose shops have been completely demolished, they will be allotted constructed shops admeasuring 10 feet X 20 feet. It also provides that in case of the persons whose houses were partly demolished or fully demolished, houses having an area 200 sq ft each will be allotted to them by way of rehabilitation. He states that the structure subject matter of Writ Petition No.12093 of 2015 has been partly demolished. This fact is accepted by the learned counsel for the petitioner in the said writ petition. ”

9. This assurance was given by the Municipal Corporation to this Court in terms of Resolution No.60 dated 11th December, 2015. The Resolution No.60 dated 11th December, 2015, on its plain reading, provides that irrespective of the legality of the structure, in the case of the persons whose shop premises are fully demolished for widening of Kalyan-Ambernath Road, a constructed shop premises admeasuring 10 feet x 20 feet will be provided by way of rehabilitation. What is surprising is that notwithstanding the affidavit of Shri. Ajit Ratna Gowari filed by the Municipal Corporation on 17th June, 2016 in which an assurance was given that the petitioner will be granted an alternate accommodation in terms of the said Resolution, during the pendency of this petition on 20th December, 2017 an application was made by the Municipal Commissioner under section 451 of the said Act of 1949 praying for rescinding the said resolution. After giving an assurance to this Court, which is on oath and which is in the nature of an undertaking, the Municipal Corporation has not even bothered to move this Court before moving the State Government. Moreover, it is an admitted position that on the basis of an application made by the Municipal Corporation, as of today, the State Government has not rescinded the said Resolution. The said Resolution continues to bind the Municipal Corporation and therefore, now it is not open for the Municipal Corporation to contend that the petitioner cannot be given an alternate accommodation in terms of the said Resolution. As stated earlier, the Resolution does not contemplate any inquiry into ownership right of a person whose shop has been completely demolished in road widening as condition precedent for grant of

alternate accommodation. All this has to be appreciated in the light of the fact that the action of demolition is completely illegal as due process of law has not been followed by the Municipal Corporation.

10. The statement made in the subsequent affidavit-in-reply dated 04th January, 2018 by the Assistant Commissioner that the Municipal Corporation does not have any premises or plots cannot be accepted for its face value.

11. The learned counsel appearing for the petitioner has tendered across the bar a chart giving details of the properties where premises are available which can be allotted to the petitioner. However, we are not making any adjudication on this aspect and it is for the Municipal Corporation to look into it.

12. There is a serious dispute whether the respondent no.6 has carried out construction at the site of the shop of the petitioner. It is also alleged by the petitioner that the construction carried out by the respondent no.6 is illegal. In fact in the first affidavit filed by the Assistant Commissioner, it is contended that a notice has been issued to the respondent no.6 in December, 2016. We are not inclined to issue any writ directing demolition of the structure of the respondent no.6. However, we propose to direct the Municipal Corporation to take inspection of the construction carried out by the respondent no.6 and take action of demolition in accordance with the law if any illegality is found in the construction.

13. There are two prayers made, one is for grant of alternate accommodation and second is for grant of monetary compensation. We accept the first prayer as on the failure of the Municipal Corporation to provide alternate accommodation, the petitioner will have his remedy available.

14. Hence, we pass the following order :-

ORDER

(i) We direct the Ulhasnagar Municipal Corporation to allot a suitable shop premises admeasuring 10 feet X 20 feet to the petitioner in terms of the Resolution No.60 dated 11th December, 2015 within a period of three months from the date this judgment and order is uploaded ;

(ii) On the failure of the Municipal Corporation to comply with the above direction, apart from taking recourse to the remedy under the Contempt of Court Act, 1971, we grant liberty to the petitioner to file a fresh proceedings in this Court for seeking appropriate reliefs ;

(iii) We direct the Designated Officer of the concerned ward to visit the site of the construction carried out by the respondent no.6. If he finds that illegal construction has been carried out by the respondent no.6, the Municipal Corporation shall initiate appropriate proceedings in accordance with the law for demolition of the said illegal

construction. Needless to state that an action of demolition shall not be taken without giving an opportunity to the respondent no.6 of being heard ;

(iv) Rule is made absolute partly on above terms.

(v) All concerned to act on an authenticated copy of the judgment and order.

(P.N. DESHMUKH, J.)

(A.S. OKA, J.)