

pmw

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6665 OF 2017**

Smt. Majedabano Moh. Mukeem Ansari	... Petitioner
Vs.	
Bhiwandi Nizampur City Municipal Corporation & Ors.	... Respondents

Mr. Atharva Dandekar for the Petitioner.
Mr. N.R. Bubna for the Respondent No.1.
Mr. Atul G. Damle, Senior Advocate i/by Mr. R.D. Suryawanshi for Respondent Nos.2 to 4.

**CORAM : A.S. OKA &
P.N. DESHMUKH, JJ.**

DATE : 9th FEBRUARY, 2018

P.C.

1 Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the first respondent and the learned counsel appearing for the second to fourth respondents. The learned counsel appearing for the first respondent has produced for perusal of the Court a file containing relevant documents. The file shows that on 15th October, 2015 when the officers of the Municipal Corporation inspected the structure subject matter of this Petition (pages 79 to 83), construction of ground floor was in progress. It appears that further inspection was carried out on 16th October, 2015, when certain

construction material was seized. It appears that on 4th November, 2015 a notice was issued to second and third respondents calling upon them to stop the construction. On 7th November, 2015 when the Municipal Officers visited the property, it was found that slab of the ground floor was laid which was not in existence on 15th October, 2015. On 8th March, 2016, when the Municipal Officers visited the property it was found that brick work of the ground floor and the construction of erection of columns of the first floor was in progress. Photographs taken on that date are also part of the file. It appears that prosecution was lodged against second and third respondents under Section 52 of the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act, 1966”). There are further reports of inspection carried out by the Municipal officers and photographs taken during the course of inspection. It appears that construction continued on the site. The report dated 11th August, 2016 submitted by the Municipal officers of the inspection along with photographs show that RCC work of ground plus two floors was completed and work of third floor was in progress.

2 On 31st May, 2017 again inspection was taken when it was found that substantial work of ground plus three floors was completed. Some shops on the ground floor were occupied and the construction of fourth floor was in progress. There are subsequent notices issued by the Bhiwandi Nizampur Municipal Corporation and in fact of 2nd June, 2017

hearing was fixed. It appears that FIR was registered vide C.R. 81/2017. On 7th June, 2017 an order was made by the Assistant Commissioner which is addressed to second and third respondents which holds that construction of ground plus four floors made by them is completely illegal. In terms of ad-interim order passed by this Court on 12th July, 2017 the Municipal Officers visited the building. At that time, it was found that construction of ground plus five floors was completed. The work of plastering upto three floors was completed. Partial brick work of fourth floor was completed and brick work of fifth floor was in progress. It is pointed out that out of 13 galas on the ground floor, some have been occupied and some are kept closed. It is pointed out that some of the flats have been also occupied. The photographs taken on 24th October, 2017 have been annexed which show that substantial number of shops on the ground floor have been occupied and parts of the upper floors has been occupied.

3 It is true that the petitioner has filed a suit for injunction against second to fourth respondents in which a limited injunction has been granted which prevents the second to fourth respondents from carrying out construction. The documents in the file prima facie show that there is no development permission granted to second to fourth respondents. The second to fourth respondents have proceeded with construction as stated above after 27th July, 2015. Apart from the fact

that construction is grossly illegal it was completely in breach of the order dated 27th July, 2015 passed by the Civil Court.

4 The issue in this Petition is about inaction of the Bhiwandi Nizampur Municipal Corporation to take action of demolition against the illegal structure. Notwithstanding the pendency of the suit filed by the petitioner, this Petition will have to be interfered as the documents produced by the Municipal Corporation prima facie show that notwithstanding several notices issued by the Municipal Corporation and notwithstanding grant of interim relief by the trial Court, the construction high handedly proceeded. The construction of ground plus five floors is completely illegal. Some of the premises have been permitted to be occupied. The learned Senior Counsel appearing for the second to fourth respondents states that Shri Ethesham Ahmed Azmi is present in the Court on behalf of the second to fourth respondents.

5 At this stage, the learned Senior Counsel appearing for the second to fourth respondents pointed out that in this Petition the grievance made is about illegal construction in respect of CTS No.334, Survey No.32, Hissa No.3 (part). The documents in the file to which we have made a reference indicate that the same are in respect of the land bearing Survey No.72/3, CTS No.342, Vetalpada, Bhiwandi. Thus, the structure subject matter of the documents in the file is on land

bearing CTS No.342, Survey No.72/3 in respect of which no relief is claimed in the Petition.

6 We may note that in R.C.S. No.428 of 2015, the prayer sought is in respect of the land bearing CTS No.334, Survey No.32, Hissa No.3 (part) at village Nagaon, Khandupada. Therefore, second to fourth respondents were right in submitting that the file which is produced by the learned counsel appearing for the Municipal Corporation does not relate to City Survey No.334, Survey No.32, Hissa No.3 or Survey No.82, Hissa No.3.

7 In the circumstances and in view of the fact that the suit filed by the petitioner is already pending in the Civil Court, we decline to entertain this Petition. However, we clarify that notwithstanding the disposal of the Petition, the Municipal Corporation is bound to take action in accordance with law for demolition of the illegal structure constructed on Survey No.72/3 of village Nagaon, (City Survey No.342) at Bhiwandi, District Thane. Subject to what is observed above, the Petition is disposed of.

(PN. DESHMUKH, J)

(A.S. OKA, J)