

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11956 OF 2013

Mr.Prakash Mahadik for the Petitioner/applicant
Mr.N.R.Bubna for the respondent No.1
Mr.Yogendra Pendse for respondent No.3 in the WP and
for the applicant in RPW/21/2017 and CAO/26/2017

P.C.:

1 In this writ petition under Article 226 of the Constitution of India, originally the challenge was to the notice dated 7th October 2008 issued by the Assistant Commissioner of the Thane Municipal Corporation to the second respondent. The third respondent is the society of occupants of the building subject matter of the said notice. The petitioner who is a practising Advocate was holding a premises on the first floor of the subject building. The notice dated 7th October 2008 which is impugned in this petition is under section 268 (1) of the Maharashtra Municipal Corporations Act, 1949 (for short 'the said Act'). The notice proceeds on the footing that the building is in a dangerous and

ruinous condition and therefore, the second respondent was called upon to vacate the building.

2 The petitioner served a notice under section 80 of the Code of Civil Procedure, 1908 (for short "the said Code") to the third respondent-society. In the notice, a contention is raised records that the first floor of the building should be spared while carrying out the demolition. He placed reliance on the report of structural status submitted by the Structural Engineer.

3 On 19th December 2013, this Court granted ad-interim relief directing that no further action shall be taken on the basis of the notice dated 7th October 2008. This Court added a rider that the petitioner will continue to occupy the structure at his own risk. The said relief was continued from time to time. Later on, the petition was amended. Paragraph 11(a)(ii) has been added for alleging that the first and third respondents have demolished the first floor premises of the petitioner in blatant violation of the ad-interim order of this Court. Therefore, a prayer is made seeking a writ of mandamus against the third respondent to construct and allot a premises equivalent to 1136 sq. ft carpet area on ownership basis. Another prayer is made directing the first and third respondents to pay the amount of Rs.15,00,000/- as a compensation.

4 Civil Application No.2804 of 2014 was taken out by the petitioner which is affirmed on 29th November

2014. Paragraph 7 of the said application reads thus:

"7 It is submitted that on 15/9/2014 Respondent No.1 violated the interim order of this Hon'ble Court in conspiracy with Respondent No.2 served a notice. The copy of the said notice dated 15/9/2014 with annexed herewith as Exhibit 'D' to vacate the premises of petitioner. On 25/9/2014 the Municipal Corporation issued orders the M.S.E.B to remove all the electric meters and connections from the premises of the petitioner. As soon as the electric meters were removed the petitioner vide his letter dated 29/9/2014 sent an urgent notice to the Respondent No.1 saying that on what basis they had removed the meter and electricity from the premises of Petitioner, when Hon'ble High Court interim order was prevalent on 25.9.2014. And asked for compensation of Rs.5,000/- per day. It was also informed to the Respondent No.1 that the Writ Petition No.11956/2013 is to be placed in the Hon'ble High Court on 6.10.2014 and interim orders were continued. Loss of Rs.5000/- per day for want of electricity and water into the premises of petitioner was being caused. The copy of the said letter dated 29.9.2014 is annexed herewith Exh.E."

5 The prayer in the civil application is for

directing the first respondent to re-construct the premises of the petitioner. To the said civil application, a copy of the notice dated 16th May 2014 issued by the said Municipal Corporation is annexed which informs all the occupants of the subject building that on 15th September 2014, the building was inspected by the Municipal Officers. The notice dated 15th September 2014 is addressed to the second respondent as well as third respondent and all occupants of the building alleging that the entire building consisting of ground plus three floors is in a very dangerous condition. It records that notwithstanding earlier notices, the building has not been vacated.

6 In the letter dated 29th September 2014 addressed by the petitioner to the first respondent, he relied upon the report of Shri B.T.Virani, Architect by contending that the first floor is in good condition and second and third floors should be removed cautiously. Another notice dated 27th October 2014 issued under section 80 of the said Code is annexed to the said civil application. On page 3 of the said notice, the petitioner has stated thus:

"....When the High Court orders were served upon you then how can Municipality authorised any other person to demolish the structure of Y.J.Master, Thane Municipal Corporation had issued a notice on all the occupants of Takle Building including Advocate Master on

15.9.2014 vide notice No.858 asking the occupants to vacate within 24 hours. When High Court order was prevalent, then how a notice can be issued on 15.9.2014 asking the occupants who were responsible for neglect of the 2nd and 3rd floor to demolish the entire structure."

7 These averments show that the notice dated 15th September 2014 was served to the petitioner. This notice dated 27th October 2014 repeatedly refers to ad-interim relief granted by this Court. The petitioner was aware as to what was the nature of the ad-interim order dated 19th December 2013.

8 Shri Vijaykumar Jadhav, Assistant Commissioner has filed an affidavit dated 29th November 2017. In the affidavit he has relied upon a fresh structural report of M/s.Aniruddha Nakhwa which is of 4th August 2014, a copy of which has been annexed to the said affidavit. Shri Jadhav has relied upon the letters dated 19th August 2014 and 28th August 2014 submitted by the petitioner to the first respondent in which he has stated that he will not hold the Assistant Commissioner responsible if despite taking full precautions, entire building comes down while carrying out the demolition of second and third floors of the building. The contention in the letter is that only second and third floors of the building are in dilapidated condition which are required to be pulled down.

9 The learned counsel for the petitioner submitted that when the ad-interim order dated 19th December 2013 was in force, the action of demolition ought not to have been taken. He submitted that the notice dated 15th September 2014 was not at all served on the petitioner. He, therefore, submits that the amendment may be permitted to enable the petitioner to challenge the said notice dated 15th September 2014. He submitted that the action of demolition by the third respondent-society on the basis of this notice is completely illegal.

10 We have considered the submissions. We have already quoted the contents of the notice dated 27th October 2014 issued by the petitioner himself under section 80 of the said Code in which he has accepted that the Municipal Corporation has issued notice to all the occupants of the building including he himself on 15th September 2014. He has even quoted outward number of the notice dated 15th September 2014. As stated earlier, in paragraph 7 of the civil application, the petitioner has accepted that there was a notice served on him on 15th September 2014.

11 Ad-interim order passed on 19th December 2013 is in terms of clause 3 thereof which reads thus:

“ Not on board. Taken on board.

2 The petition to come up on the scheduled date i.e 28th January 2014. Issue notice to the respondents returnable on the same date.

In addition to the notice through Court, the petitioner is directed to serve private notice to the respondents. If affidavit of service of notice is not filed one week before the scheduled date, the petition shall stand dismissed for non-prosecution without further reference to the Court.

3 Till the next date, no further action shall be taken on the basis of the notice dated 7th October 2008. We further make it clear that the petitioner shall continue to occupy the premises, allegedly in his possession, strictly at his own risk."

12 Hence, ad-interim order is very specific. The ad-interim order is confined to taking action on the basis of the notice dated 7th October 2008 impugned in the writ petition. The affidavit of Shri Jadhav shows that on 4th August 2014 a fresh structural report was submitted by M/s.Anirudha Nakhwa which records that the building is in dangerous condition and unsafe for habitation. A copy of the report annexed to the affidavit records that the damage to the structure in totality is similar for all floors. It is on the basis of this report that further inspection was carried out by the Municipal Corporation and that the notice dated 15th September 2014 was issued calling upon the occupants of the building to vacate immediately as the building was in a dilapidated and ruinous condition. The notice dated 15th September 2014 was not challenged by the

petitioner. The petitioner is a member of the Bar. The demolition has been admittedly carried out by the third respondent on the basis of the notice dated 15th September 2014 which was served to the petitioner and which was not challenged by him.

13 Therefore, it cannot be said that the building has been demolished in breach of the ad-interim order passed by this Court. The building has been demolished by the third respondent. Therefore, if the petitioner is entitled to compensation, if any, he can seek it only from the third respondent. The petitioner by way of amendment prayed for a writ of mandamus to re-construct building. The writ of mandamus is sought against the third respondent-society.

14 Therefore, we decline to entertain this petition. However, we keep all the remedies of the petitioner against the third respondent-society for seeking appropriate relief including the reliefs sought in terms of prayer clause (a-1) and (a-2) open and the petitioner can adopt the said remedy. The challenge in the petition to the notice dated 7th October 2008 has become academic as the subsequent notice is not challenged by the petitioner though it was served upon him. In writ jurisdiction, we cannot allow the writ petitioner to belatedly challenge the said notice.

15 Accordingly, writ petition is disposed of.

However, the remedies of the petitioner as stated above are kept open. As a consequence of disposal of the writ petition, pending civil applications and the review petition do not survive and the same are disposed of.

(RIYAZ.I.CHAGLA,J.)

(A.S.OKA,J.)