

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2614 OF 2017

Deepak S. Kamble

..Petitioner

vs.

Municipal Corporation of Greater Mumbai & Ors.

...Respondents

Mr. M. M. Vashi, Senior Advocate a/w Ms. Aparna Deokar i/b M.P. Vashi & Associates for the Petitioners.

Ms.Vandana Mahadik for the Respondents.

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

DATE ON WHICH JUDGMENT IS RESERVED : 13th FEBRUARY, 2018.

DATE ON WHICH JUDGMENT IS PRONOUNCED : 26th MARCH, 2018.

JUDGMENT [PER : P.N. DESHMUKH, J.]

. The challenge in this petition under Article 226 of the Constitution of India is to the act of demolition of Petitioner's subject structures carried on 6/10/2017 contending to be illegal without following due process of law and thus, the Petitioner has sought a writ of mandamus issuing direction to the Respondent to reconstruct the demolished structure or in the alternative to grant permission to reconstruct the demolished structure, which is more particularly shown in sketch, subject to the Respondents reimbursing the cost of construction.

2. It is the case of the Petitioner that on the land bearing CTS No.301 one Mrs. Nalatai L. Nadar put up the subject structures and which were assessed by Tahsildar for non agricultural purpose. The subject structures were admeasuring 2800 sq.ft, which structures were sold to the Petitioners by an agreement dated 27/8/2009 by the said Mrs. Nalatai L. Nadar. It is the case of the petitioner that having been in possession of the

subject structures admeasuring 2800 sq. ft. situated at CTS No.301 as aforesaid he was using the same as garage which structure came to be demolished on 6/10/2017 by the officers of Respondent without following due process as no notice of demolition was served at any point of time.

3. This Court on 18/12/2017 had recorded that the learned counsel appearing for the Respondent-Corporation does not dispute that the Petitioner's structures has been demolished by the Respondent No.1 without following due process of law. The contention of the learned counsel appearing for the Respondents is that the structure was illegally constructed and thus, the petitioner is not entitled for any relief.

4. In view of the facts of the petition and statement of learned counsel for respondent recorded as aforesaid demolition of the subject structure of the petitioner, without following due process of law is duly established. Thus, we find much substance when it is contended that the act of Respondent is totally in contravention of the law laid down in the case of *Sopan Maruti*.

5. In the case of *Sopan Maruti Thopte & Anr. vs. Pune Municipal Corporation and Anr*¹ the first Court has issued following directions in paragraph Nos.19 to 21 which reads thus.

“19. Hence, on the basis of the law as discussed above, it is directed that after 1st May, 1996 the Bombay Municipal Corporation or the Municipal Corporations constituted under the B. P.M.C. Act would follow the following procedure before taking action under Section 351 of the B.M.C. Act or under S.260 of the B.P.M.C. Act.

"(i) In every case where a notice under Section 351 of the B.M.C. Act/ under Sec. 260 of B.P.M.C. Act is issued to a party 15 days' time shall be given for submitting the reply. In case the party to whom notice is issued sends the reply with the documents, and

1 AIR 1996 Bom 304

shows cause, the Municipal Commissioner or Deputy Municipal Commissioner shall consider the reply and if no sufficient cause is shown, give short reasons for not accepting the contention of the affected party.

(ii) It would be open to the Commissioner to demolish the offending structure 15 days after the order of the Commissioner/Deputy Municipal Commissioner is communicated to the affected person.

(iii) In case the staff of the Corporation detects the building which is in the process of being constructed and/or reconstructed and/ or extended without valid permission from the Corporation, it would be open to the Commissioner to demolish the same by giving a short notice of 24 hours after drawing a panchanama at the site and also by taking photographs of such structure and/or extension. The photographs should indicate the date when the same were taken.

(iv) In case where the Municipal Corporation has followed due process of law and demolished the unauthorised structure and or extension, if the same is reconstructed without valid permission within a period of one year, it would also be open to the Corporation to demolish the same by giving a short notice of 24 hours.

(v) If the offending structure and/or extension which is assessed by the Corporation for two years, notice shall provide for 15 days' time to show cause. If the Deputy Municipal Commissioner comes to the conclusion that he requires assistance of the party, he may give an oral hearing if he deems fit and proper before passing the order. It is made clear that oral hearing is not at all compulsory but it is at the discretion of the authority.

(vi) In any other case the Corporation is directed to issue a show cause notice in case of any structure and/or extension other than those mentioned in clauses (i) to (iv) above. The Corporation shall provide for 7 days' time to show cause in such a case."

20. In case the notice is issued under Sec. 478 of the B.P.M.C. Act, 1949 and if the person has not complied with the requisitions of the Commissioner, then it would be open to the Commissioner to demolish the unauthorised structure after expiry of 30 days of the period specified in the notice for removal of such construction.

21. The Municipal Corporations in the State of Maharashtra would follow the above directions so as to avoid unnecessary litigation:"

6. In view of the above legal pronouncement and admittedly as no opportunity of hearing was given to Petitioner nor any notice of demolition was issued to him before taking action of demolition. Petition is liable to be allowed as per the order below:

ORDER

- (i) It will be open for the petitioner to reconstruct the structures as has been stated in paragraph 4 of the Petition at the same place where it was in existence earlier and of the same dimensions. The construction material shall be of similar nature;
- (ii) Before commencing the work of reconstruction, the petitioner shall serve a notice to the designated officer of the concerned ward of the respondent department. Needless to state that even if the structures are reconstructed on the basis of this order no authenticity will be conferred on the subject structures;
- (iii) If the original subject structures were constructed without obtaining development permission, the reconstructed structures which are now permitted to be reconstructed will have to be treated as constructed without obtaining the development permission. Therefore, after reconstruction it will be open for the Respondent/Corporation to initiate action of demolition of the subject structures which however, shall not be taken without following the law laid down in Sopan Maruti's case supra;
- (iv) Rule is partly made absolute on the above terms with no orders as to costs.

(P.N. DESHMUKH, J)

(A.S. OKA, J.)

After the judgment is pronounced, the learned counsel appearing for the Municipal Corporation seeks stay for a period of eight weeks. The learned Senior Counsel appearing for the Petitioner on

instructions states that the order of reconstruction will not be enforced by the Petitioner for a period of eight weeks from today. We accept the said statement. Hence, it is not necessary for us to consider the prayer for stay.

(P.N. DESHMUKH, J)

(A.S. OKA, J.)