

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 12895 OF 2019

Ram Pralhad Khetri and others .. Petitioners

Versus

The Municipal Council Pathri
and others .. Respondents

Shri P. S. Paranjape, Advocate for Petitioners.

Shri V. D. Sapkal, Advocate h/f Shri M. P. Tripathi, Advocate for
the Respondent No. 1.

Shri S. G. Karlekar, A.G.P. for the Respondent No. 1.

**CORAM : S. V. GANGAPURWALA AND
ANIL S. KILOR, JJ.**

DATE : 16TH OCTOBER, 2019.

FINAL ORDER :

. Mr. Paranjape, the learned advocate for petitioners submits that, the petitioners are tenants over the writ premises. They are running their businesses. The petitioners are armed with an order of injunction of the Civil Court. The notice has been issued under Section 89 of the Maharashtra Regional and Town Planning Act (for short "MRTP Act") seeking eviction. Same is illegal. The petitioners have approached the respondent No. 1 seeking documents. The documents are not provided by the respondent No. 1/Municipal Council.

2. Mr. Sapkal, the learned advocate for the respondent No. 1 submits that, the scheme has been prepared and finalized in the

year 2002. As per the scheme the writ land is reserved for shopping complex. The petitioners claim to be tenants from the year 1982. Even as per Section 92 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, a person cannot be tenant for more than nine years in total. On that ground also the petitioners are not entitled for possession. The decree of the Civil Court is only to the extent that possession should not be taken by the Municipal Council without following due process of law. The respondent No. 1 has resorted to Sec. 89 of the MRTP Act. The learned counsel relies on the judgment of the Division Bench of this Court in a case of **Balkrishna Arjun Jadhav and others Vs. Thane Municipal Corporation and others** reported in *1997(3) Mh.L.J. 260*.

3. We have considered rival submissions canvassed by the learned counsel for respective parties.

4. The petitioners certainly will have right to file reply to the notice issued to the petitioners purportedly under Section 89 of the MRTP Act and stand of the petitioners is required to be considered by the respondent authorities. The procedure is prescribed under Rule 19 of the Maharashtra Town Planning Scheme Rules 1974. Even in the case of **Balkrishna Arjun Jadhav and others Vs. Thane Municipal Corporation and others** (supra) the Court observed that, the person issued with the notice under Section 89 of the MRTP Act can raise such contention and point out to the authority his right to occupy and the authorities are

bound to consider contention of such person.

5. Considering the above we pass following order.

6. The petitioners shall file reply to the notice received by them purportedly issued under Section 89 of the MRTP Act within a period of ten (10) days from today. The respondent No. 1 authority shall consider contentions raised by the petitioners and take decision upon it on its own merits and in accordance with law.

7. Till the decision is taken after the say/reply is filed by petitioners, the respondent No. 1 shall not take further action under Section 89 of the MRTP Act.

8. With these observations the writ petition is disposed of. No costs.

[ANIL S. KILOR, J.]

[S. V. GANGAPURWALA, J.]

bsb/Oct. 19