

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (ST) NO. 7574 OF 2019

Gauhar Nayeem Khan	}	Petitioner
versus		
Thane Municipal Corporation	}	Respondent

Mr.H.S.Deshpande with Mr.Syed wajid H.
for the petitioner.

Mr.Mandar Limaye for the respondent.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

DATE :- APRIL 5, 2019

P.C. :-

1. After this writ petition was argued for some time and our attention was invited to the show-cause notice issued under section 260(1) and (2) of the Maharashtra Municipal Corporation Act, 1888 (hereinafter referred to as “the MMC Act”), we called upon Mr.Limaye appearing for the respondent, particularly the Thane Municipal Corporation, to explain and clarify to us as to how such a notice dated 22nd January, 2019 at page 61 of the paper book can be issued when the petitioner has relied upon a decree passed in a civil suit against the Municipal Corporation.

2. The law is very clear, inasmuch as, in the MMC Act, section 260 confers the power on the Municipal Corporation to firstly, arrive at its satisfaction that the building or work is commenced contrary to the rules or bye-laws. The satisfaction has to be in terms of sub-section (1A) and the power to then follow up the matter is set out in the further clauses of sub-sections (1A) and (2). Thus, the notice has to be in writing, requiring the person, who is erecting such building or executing such work or has erected such building or executed such work on or before such day as shall be specified in such notice, by a statement in writing subscribed by him or by an agent duly authorised by him in that behalf to show sufficient cause why such building or work shall not be removed, altered or pulled down. A number of times the legislature has employed the word "such" which would demonstrate that it is to deal with the acts, commenced or completed. On every occasion that this word is employed, the legislature had in mind sections 261, 264 and 478. When this word is employed in sub-section (1A) of section 260, then, the legislature has in mind the erection of any building or execution of work as is described in section 264 of the said MMC Act.

3. A bare perusal of the notice, copy of which is at page 61 of the paper book, leaves us in no manner of doubt that the

Municipal Corporation attempted to achieve twin purpose. It purportedly attempted to deal with the structure of ground plus three upper floors and at the same time, it attempted to ensure that the petitioner comes around for talks or negotiation so that it can voluntarily and by peaceful means obtain a portion of the petitioner's property for road widening. We do not think that such a notice could have been replied otherwise than as replied by the petitioner and by placing heavy reliance on the judgment and decree dated 31st July, 1993 passed in Regular Civil Suit No.821 of 1986. Now, when such a notice is issued, cause shown, the manner in which it should have been dealt with is well settled. The cause shown should have been demonstrated to be entirely unsatisfactory or lacking in bonafides. Far from that, the impugned order makes no reference to the cause shown at all. It is in these circumstances, we do not find that the law has been adhered to.

4. When such state of affairs were brought to the notice of Mr.Limaye, he fairly states that it will be difficult to sustain the order and the notice preceding it. That may be quashed and set aside with liberty reserved to the Municipal Corporation to proceed again and in accordance with law.

5. In the light of this fair stand of the Municipal Corporation, reflected from the instructions received by Mr.Limaye, we quash

and set aside the impugned notice as also the order in furtherance thereof, reserving liberty to the Municipal Corporation to initiate fresh action, but strictly in accordance with law. We clarify that we have not expressed any opinion on the rival contentions save and except inviting the attention of the respondent to the legal provisions.

6. The writ petition is disposed of in the above terms. There would be no order as to costs.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)