

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7569 OF 2016**

**Kumar Lachhmandas Gurnani @
Kumar Lachhmandas Mandhyani ... Petitioner**

Vs

**Ulhasnagar Municipal Corporation
and Ors. ... Respondents**

Mr.N.R.Bubna for the Petitioner.

Mr.Suresh M. Kamble for Respondent
Nos.1 and 2.

Mr.Manoj Mohnani I/b Keshav B. Borhade
for Respondent No.5.

Mrs.M.P.Thakur, AGP for State.

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

DATE :- MARCH 27, 2019

P.C. :-

1. Heard both sides. Perused the writ petition and the annexures thereto.

2. The prayer in this writ petition is to direct the Ulhasnagar Municipal Corporation to take steps to demolish an unauthorised construction behind the shop of the petitioner. The construction as also the shop of the petitioner are more particularly described in the writ petition as also in prayer clause (a) of the writ petition.

3. The essential grievance is that the petitioner has not been compensated for part acquisition of his shop in accordance with law, but at the same time, a person claiming to be similarly situated as that of the petitioner, upon losing his property or shop, has been allowed to erect construction beyond the permission or sanction or virtually with no sanction and his act has not resulted in any penalty or otherwise though notice under Section 268 of the Maharashtra Municipal Corporation Act, 1949 has been served on respondent No.5.

4. The fifth respondent has filed an affidavit in reply and justified the construction or his act by alleging that he is also similarly placed for he lost his shop/premises in road widening and the policy prevailing is that such person can set back their property and thereafter use its potential to the fullest by going skywards. That is how the construction of ground plus two upper storeys has been made and it is not unauthorised or illegal as alleged.

5. We do not enter into this controversy for once the petitioner has served respondent No.5 a notice and he has filed a suit in the Court of Civil Judge Junior Division, Ulhasnagar, then, in the event no prohibitory or restraint orders are passed at an interlocutory stage or finally, he will have to abide by the notice.

If he shows cause, then, he must, irrespective of the pendency of the suit and without prejudice to the rights and contentions, file a reply to the show cause notice.

6. Mr.Mohnani appearing for respondent No.5 seeks two weeks time to file such reply. Time granted.

7. Let that notice be adjudicated and final orders be passed thereon as expeditiously as possible and in any event, within a period of two months from today.

8. The writ petition is disposed of by clarifying that we have not expressed any opinion on the rival contentions.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)