

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

WRIT PETITION NO. 8764 OF 2019

Namdeo Pundalik Sahane

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Mr. Ashutosh S. Kulkarni, Advocate for Petitioner.

Mr. S. B. Pulkundwar, AGP for Respondent No. 1.

Mr. Rajendra S. Deshmukh, Advocate for Respondent Nos. 2 and 3.

**CORAM : S. V. GANGAPURWALA &
MANGESH S. PATIL, JJ.**

DATED : 06th JANUARY, 2020.

PER COURT:-

. The petitioner initially has assailed the notice dated 11.07.2019 issued by the respondent directing the petitioner to remain present and produce the documents with regard to the writ land. It appears that the petitioner did not remain present before the authority as contemplated in the said notice. On or about 16.07.2019 the construction of the petitioner is demolished. The petitioner amended the writ petition and sought reliefs such as damages of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand only), rent of Rs. 10,000/- (Rupees Ten Thousand only) per month and injunction not to disturb his possession.

2. Mr. Kulkarni, learned counsel submits that initially the petitioner has filed civil suit bearing RCS No. 112 of 2010 against the Municipal Corporation, Aurangabad and one Hyder Khan. The said suit is decreed under the judgment and decree dated 06.07.2013. The Municipal Corporation is restrained perpetually from causing obstruction or evacuating the plaintiff i.e. the petitioner or demolishing the said property without following due process of law. In spite of the said order the respondents have demolished the construction of the petitioner without following due process of law. This Court in the present matter on 18.07.2019 had passed order of status quo. The same is continued. The learned counsel further submits that the procedure not having been followed, the corporation has violated the orders of the Civil Court. The learned counsel relies on the judgment of the Division Bench of this Court in a case of ***Sopan Maruti Thopte and Ors. Vs. Pune Municipal Corporation and Ors.*** reported in ***1996 (1) MhLj 963***.

3. Mr. Deshmukh, learned counsel for the corporation submits that this Court had taken suo moto cognizance of the paper report and registered suo moto public interest litigation petition bearing PIL No. 03 of 2019. The Court has directed the respondent No. 2 / Municipal Corporation to file an affidavit and clarify on the proposed action to be initiated by the Municipal Corporation, Aurangabad so as to take care

and the immediate steps for protecting the Salim Ali lake and peripheral land. The same is owned by the Municipal Corporation. Pursuant thereto, the petitioner was issued with the notice dated 11.07.2019 and was asked to remain present on 12.07.2019 along with documents substantiating his claim or else further action would be taken. The petitioner instead of appearing before the authority filed the present writ petition. As the petitioner did not submit any documents further action has been taken of demolishing illegal temporary erection of tin shed. The same is permissible as the construction is unauthorized one. The learned counsel submits that the construction has been demolished and the possession of the land is with the Municipal Corporation.

4. It appears from the documents on record that the petitioner had filed Civil Suit bearing R.C.S. No. 112 of 2010. In the said Civil Suit the Municipal Corporation, Aurangabad was a party defendant no. 1. The Municipal Corporation, Aurangabad was perpetually restrained from causing obstruction or evacuating the plaintiff i.e. the petitioner or demolishing the said property without following due procedure of law. The suit property was of an area admeasuring East-West 18.2 meters X South-North 15.2 meters i.e. 278.7 Sq. meters. The boundaries were also detailed in the said suit. The Municipal Corporation has the

authority to demolish the illegal construction and evacuate the person, however, by following due procedure of law. The procedure to be followed by the corporation while taking action with regard to the construction on the premises has been detailed by the Division Bench of this Court in a case of **Sopan Maruti Thopte (supra)**. The principles laid down in the said judgment 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 con situated 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 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."

5. If the respondent has come to the conclusion that the

construction of the petitioner is unauthorized, then certainly the corporation was required to give notice to the petitioner of the alleged, illegal construction. In the present case, the same is not given. In the P. I. L. this Court had not directed demolition without following due procedure. The corporation is the instrumentality of the State. It has to act as a model litigant. It was expected of the corporation to follow the procedure before resorting to demolition of the construction.

6. We observe that the corporation failed to follow the procedure while demolishing the construction of the petitioner over the writ land i.e. for which injunction was claimed against the corporation in Civil Suit bearing R.C.S. No. 112 of 2010.

7. As the action of the corporation was not in consonance with the procedure as laid down and that the status quo order is operating since 18.07.2019, we pass the following order.

8. As the writ land is an open piece of land, the petitioner shall be deemed to be in possession of C. T. S. No. 11583 and C. T. S. No. 11595 and writ property to the extent of 20.90 Sq. meters i.e. an area subject matter of R.C.S. No. 112 of 2010 decided under the judgment and order dated 06.07.2013 by the Civil Judge Senior Division, Aurangabad. The petitioner is at liberty to file civil suit with regard to

other reliefs claimed. The petitioner shall not carry out further construction without permission of the corporation and or the Civil Court where the suit would be filed.

9. Writ petition accordingly is disposed of. No costs.

(MANGESH S. PATIL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

PS.B.