

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

WRIT PETITION NO.11783 OF 2021

**JAHED GIYASUDDIN KAZI
VERSUS
THE CHIEF OFFICER, MUNICIPAL COUNCIL**

...
Advocate for Petitioner : Mr. V.D. Salunke

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CORAM : MANGESH S. PATIL, J.

DATE : 25.10.2021

PER COURT :

Heard the learned advocate Mr. Salunke.

2. The petitioner is the original plaintiff who is aggrieved by the consistent observations and conclusions of the two courts below holding him not entitled to temporary injunction for protection of a tin shade allegedly erected by him in a suit property and regarding which he has been served with a notice dated 12.03.2021 under the provisions of Section 189 (8) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (herein after the Maharashtra Municipal Council Act).

3. The learned advocate Mr. Salunke submits that the conduct of the petitioner is *bona fide*. He has never disputed erection of a tin shade regarding which a notice has been issued. Soon after the notice was received initially he filed a suit and subsequently even applied for its regularization by moving an application with the respondent Municipal

Council. He would further point out that there is a provision under Section 189 and 190 of the Municipal Council Act to consider the request of regularization. Even without taking any decision on his representation the respondent is bent upon to demolish the tin shade. The result would be that the suit itself would become infructuous. The learned advocate further submits that the petitioner has been coming with a specific stand that the respondent is acting at the behest of a third person who is unable to secure any relief against the petitioner in his suit. Both the courts below have failed to appreciate these facts and circumstances and have reached a perverse and arbitrary finding.

4. I have carefully considered the submissions and the papers. There is no dispute about the fact that the petitioner has erected a tin shade without obtaining any permission of the Municipal Council. There is also no dispute about the fact that he has been served with a notice under Section 189 (8) of the Maharashtra Municipal Council Act dated 12.03.2021. He replied the notice in the same month i.e. March 2021 (Exhibit-D) asserting his right to hold possession of the tin shade. Pertinently soon after receipt of the notice under Section 189 (8) he did not submit any application seeking its regularization.

5. Instead he filed the suit in the month of June 2021 claiming perpetual injunction simplicitor. The learned Judge of the trial court did not find any *prima facie* case or balance of convenience in favour of the petitioner and rejected his application for temporary injunction (Exhibit-5).

The petitioner carried the matter in Appeal under Order XXIII Rule 1 and even that is dismissed by the impugned order.

6. When, there is no dispute about the fact that the shade has been erected without any permission of the Municipal Council, irrespective of whether it is acting at the behest of some third person that would not change the scenario. The erection itself is unauthorized and illegal. If at all the petitioner was really having *bona fides* he would have promptly approached the respondent Municipal Council with a request for its regularization instead of filing the suit.

7. Considering all the aforementioned facts and circumstances, the observations and the conclusions of the learned Judge of the trial court were neither perverse or arbitrary so that the District Court could have intervened in a Miscellaneous Civil Appeal while exercising the power under Section 104 read with Order XLIII of the Code of Civil Procedure. Least, there is no sufficient and cogent reason for this Court to intervene while exercising Writ Jurisdiction.

8. The Writ Petition is dismissed.

(MANGESH S. PATIL, J.)