

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

WRIT PETITION NO.9667 OF 2021

Bharat s/o Kishanlal Jaiswal = **PETITIONER**

VERSUS

1. The Municipal Commissioner
Municipal Corporation
Aurangabad and Anr. = **RESPONDENT/S**

Mr.Nitin T.Tribhuwan, Advocate for Petitioner;

Mr.SG Chapalgaonkar, Advocate for Respondent No.1;

Mr.RL Chhabda, Advocate for Respondent No.2.

CORAM : SMT. BHARATI H.DANGRE, J.

DATE : 25th January, 2022.

PER COURT :-

1. Heard learned Counsel for the petitioner, who is aggrieved by rejection of his application in the capacity as decree-holder, seeking directions to the judgment-debtor No.1, i.e. a Corporation, to remove the cattle shed of judgment-debtor No.2. Suffice it to note that RCS No.81/2013 filed by the plaintiff was partly decreed with the following directions, -

"2. Defendant Corporation is directed to take necessary action as provided by law for causing nuisance due to cattle shed of defendant No.2 - Pandit Shamrao Kale on open premises of House No.4-9-1215"

(2)

2. The decree being passed on 18.1.2016, the decree-holder instituted the Darkhast proceeding vide Regular Darkhast No.1/2021 and sought directions to the Corporation to remove the cattle shed of Respondent No.2. This application came to be rejected, by looking to the wordings of the judgment and order dated 18.1.2016, where the Corporation was directed to take necessary action as provided by law for removal of the nuisance.

3. On perusal of the impugned order, I do not see any reason which would attract any perversity in the same. However, at the same time, the Corporation authorities cannot be permitted to throw the directions passed by any Court, including the Civil Court, to air and merely on finding the decree is not executable, sit tight over nuisance occurring within its jurisdiction and when the judgment and order of the Civil Judge, Senior Division, directed the Corporation to take necessary action as permissible under law, it is duty bound to adhere to the same. Merely stating that criminal offence has been registered, would not suffice as the Corporation is not powerless under the provisions of the Bombay Provincial

(3)

Municipal Corporations Act, which empowers the Corporation to exercise control over the jurisdiction to initiate proper action, if it is found that any person is creating nuisance.

4. With the aforesaid observations, the writ petition deserves to be dismissed. However, it is expected that the Corporation shall initiate such action, based upon the judgment and order in RCS No.81/2013, within three months from today and take the proceeding to its logical conclusion.

(SMT. BHARATI H.DANGRE,J.)

BDV