

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

909 WRIT PETITION NO.4711 OF 2018

AND

WRIT PETITION NO. 5635 OF 2019

**THE ORIENTAL INSURANCE COMPANY LTD. THROUGH ITS
DIVISIONAL MANAGER SANJAY SUDHAKARRAO CHEDGE
VERSUS**

**THE JALGAON MUNICIPAL CORPORATION, JALGAON
THROUGH ITS COMMISSIONER**

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Advocate for Petitioner:

Mr. V. Y. Sanglikar a/w. Mr. Dharurkar Chaitanya V
h/f. Mr. Deshpande Avinash S.

Advocate for Respondent/Sole: Mr. N. K. Chaudhari

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**CORAM: S. V. GANGAPURWALA &
S. G. DIGE, JJ.**

DATE: 04th JANUARY, 2022

PER COURT:

WRIT PETITION NO.4711 OF 2018

1. In Writ Petition No. 4711 of 2018 the Petitioner assails the Bills No. 3890 and 3891 issued by the Respondent claiming damages towards the occupation of Shop Hall No. G and H owned by the Respondent / Corporation.

2. Amongst other submissions, one of the submission of the learned Counsel for the Petitioner is that prior to issuance of the Demand U/Sec. 81-C(3) of the Maharashtra Municipal

Corporations Act, 1949 (*hereinafter referred to "Act-1949"*) Show Cause Notice as contemplated under Sub-Section 4 of Section 81-C of the Act-1949 was never issued to the Petitioner.

3. According to the learned Counsel for the Corporation, the petitioner did not raise Objection to the Demand Notices issued to the Petitioner. The said Demand Notices itself would amount to a Show Cause Notice.

4. The Respondent, it appears, is claiming damages on the premise that the Petitioner was in unauthorized occupation. The stand of the Petitioner appears to be that the occupation was not unauthorized. The Respondent time and again passed Resolutions one after the other. It is now contended that, though the order of eviction was passed U/Sec. 81-B of the Act-1949 and the Appeal filed against the same is dismissed and that the Petitioner has assailed the same by filing Writ Petition No. 5635 of 2019, during the interregnum, the Petitioner has surrendered the possession of

both the Shops G and H to the Respondent Corporation.

5. In the present Writ Petition, we are only concerned with the adherence to Sub-Section 4 of Section 81-C of the Act-1949. The Respondent is claiming damages on the ground that the Petitioner was in unauthorized occupation. Sub-Section 2 of Section 81-C of the Act-1949 permits the recovery of damages if any person is in unauthorized occupation of the premises of the Respondent. Reading Sub-Section 2, Sub-Section 3 and Sub-Section 4 of Section 81-C of the Act-1949 conjointly it is manifest that before ascertaining the amount of damages it is incumbent upon the Corporation to issue Show Cause Notice to the Petitioner calling upon it to show cause within a reasonable period why such order should not be made and the Corporation is required to consider the Objection raised by the Petitioner and the evidence that may be produced by it in support of it's contention.

6. In the present case, from the facts on record it appears that the Respondent did not adhere to the procedure contemplated under Sub-Section 4 of Section 81-C of the Act-1949. In light of that, we pass the following order.

7. The impugned Demand Notices (*Exhibit-A*) (*Page Nos. 17 and 18*) shall be construed as Show Cause Notices to the Petitioner. The petitioner may file Reply preferably within a period of three (03) weeks from today. The Commissioner of the Municipal Corporation and / or Authorized Officer shall consider the Objection / Reply filed by the petitioner and the evidence that may be submitted by the Petitioner in support of his Objection and thereafter take decision afresh with regard to the claim of the Respondent Corporation against the Petitioner. The Petitioner may, if it so desires, represent itself before the Commissioner and / or the Authorized Officer.

8. The amount deposited by the Petitioner pursuant to the orders passed by this Court is

transferred to the proceedings pending with the Municipal Corporation. The amount shall be maintained in a separate account. The same shall not be withdrawn by the Municipal Corporation for any purpose. Subject to the decision that would be taken by the Commissioner and / or the Authorized Officer as directed herein, the parties may take further steps with regard to the order and / or the amount.

WRIT PETITION NO.5635 OF 2019

9. Writ Petition No. 5635 of 2019 is filed challenging order of eviction passed U/Sec. 81-B of the Act-1949 and the decision of the District court dismissing the Appeal filed by the Petitioner against the order of eviction.

10. We have already directed that the Demand Notices shall be construed to be Show Cause Notices and decision shall be taken by the Commissioner / Competent Authority considering the Reply and documents filed by the Petitioner. The Commissioner shall have to arrive at the conclusion of the Petitioner in unauthorized

occupation or otherwise afresh after considering the Reply and the documents that may be filed by the Petitioner. The Petitioner has already surrendered the possession of the shops. The finding of the Petitioner in unauthorized occupation by the Competent Authority as well as Appellate Authority is rendered redundant, as after receipt of Reply from the Petitioner fresh decision will have to be arrived at by the Competent Authority about nature of occupation.

11. As the fresh decision is to be taken by the Commissioner pursuant to the orders passed in Writ Petition No. 4711 of 2018, Writ Petition No. 5635 of 2019 would not survive. The Commissioner and / or the Authorized Officer shall have to take fresh decision with regard to the nature of the occupation of the Petitioner for which the demand is claimed.

12. The Writ Petitions accordingly stand disposed of. No costs.

[S. G. DIGE, J.]
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[S. V. GANGAPURWALA, J.]