

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO. 471 OF 2022

Nashik Municipal Corporation & Anr.

... Petitioners

V/s.

Aasif Iqbal Shaikh

... Respondent

**WITH
CIVIL WRIT PETITION NO. 481 OF 2022
WITH
CIVIL WRIT PETITION NO. 478 OF 2022
WITH
CIVIL WRIT PETITION NO. 476 OF 2022
WITH
CIVIL WRIT PETITION NO. 483 OF 2022
WITH
CIVIL WRIT PETITION NO. 484 OF 2022
WITH
CIVIL WRIT PETITION NO. 482 OF 2022
WITH
CIVIL WRIT PETITION NO. 479 OF 2022
WITH
CIVIL WRIT PETITION NO. 475 OF 2022
WITH
CIVIL WRIT PETITION NO. 485 OF 2022
WITH
CIVIL WRIT PETITION NO. 480 OF 2022
WITH
CIVIL WRIT PETITION NO. 477 OF 2022
WITH
CIVIL WRIT PETITION NO. 470 OF 2022
WITH
CIVIL WRIT PETITION NO. 472 OF 2022**

Ms. Chaitrali Anand Deshmukh for Petitioners in all WPs
Mr. Vivek Salunkhe a/w Mr. Ajinkya J. Jaibhave & Adv. Adv Anusha Pradha Jaibhave for Respondent in all WPs

CORAM : NITIN W. SAMBRE, J.

DATED : 18th JULY, 2022

P.C.:

1. By consent, all these petitions are taken up for final disposal at this stage and are decided by this common order.
2. For the purpose of disposal of all these petitions facts in WP/475/2022 (Nashik Municipal Corporation, Nashik & Ors vs. Mahesh Kapurchand Mangal) are taken into consideration.
3. Heard Ms. Chaitrali Deshmukh, counsel appearing for Petitioner-Corporation.
4. Petitioner-corporation is governed by the provisions of the Maharashtra Municipal Corporation Act, 1949 (for short "the MMC Act").
5. The order impugned in the petition is passed by the District Judge in exercise of powers u/s. 81-B of the said Act whereby the Petitioner is injuncted from taking action against the respondents/license holders thereby evicting them from the suit premises i.e. the execution of the notice dated 05/05/2021 is ordered to be stayed and an appeal preferred u/s 81-B of the said act is decided.
6. Counsel for petitioners would invite my attention to the

notice issued against the respondent on 05/05/2021 which is claimed to be in exercise of powers under the provisions of the Disaster Management Act, 2005 and the Epidemic Diseases Act, 1987. Respondents are the license holders of petitioners and their license period is informed to have come to an end on 31/03/2014. The Petitioner-corporation vide resolution no. 609 passed by the general body on 14/10/2016 extended the aforesaid license period by 15 years. However, the parties are in agreement that till this date no agreement to that effect is executed.

7. It is alleged that the suit premises which are part of the existing corporation hospital is required for the purpose of management of epidemic disease i.e. Covid -19. The notice under the provisions of section 65 of the Disaster Management Act dated 05/05/2021 came to be issued, calling upon the respondents to vacate the suit premises within a period of three days. The said notice is questioned by the respondents in Appeal No. 45 of 2021 under section 81-B of the MMC Act. In the said Appeal, an application at Exhibit-5 for grant of temporary injunction came to be allowed vide impugned order dated 21/05/2021.

8. Feeling aggrieved, the Petitioner-Corporation has preferred this Petition on the ground that since the notice was issued under

section 65 of the Disaster Management Act, the provision of section 81-B which provide for appellate remedy to respondents is not available.

9. Ms. Chaitrali Deshmukh counsel appearing for the petitioner has instructions to make a categorical statement that notices to the respondents are issued under the Disaster Management Act. She would, as such, claim that since appeal itself is not maintainable, the order impugned becomes without jurisdiction. Apart from above, her contentions are the petitioner-corporation so as to safeguard the interest of the respondents have already offered alternate accommodations, which respondents are yet to recourse to or opt for.

10. In the aforesaid background, it is claimed that order impugned warrants interference.

11. Counsel for the respondents while inviting attention of this Court to the provisions to section 81-B of the MMC Act would urge that the said provision confer right in petitioner-corporation to evict a persons like respondents in public interest. As such, he would urge that notice dated 05.05.2021 can be read to have been issued under the provisions of the MMC Act.

12. He would try to substantiate his aforesaid claim by relying on

the language of the notice dated 05.05.2021, as according to him a specific reference is made to the license entered into, the extension of license period and failure of the respondents to clear the arrears.

13. Apart from above, by inviting attention of this Court to the order passed by the Civil Court in exercise of powers under order VII rule 11 of CPC on 17/10/2020, he would urge that notice dated 25/06/2020 was issued even under the similar provisions i.e. the MMC Act and Disaster Management Act etc.

14. He would urge that in said order of the Civil Court, while prayer of petitioner-corporation for rejection of plaint was allowed, a specific reference is made as regards to maintainability of the appeal under section 81-B of the MMC Act as said notice was considered to be under the provisions of the Corporation Act.

15. The contentions of the counsel for the respondents is provision of section 81-B particularly clause (C) of sub section 1 of section 81-B which provides for eviction in public interest can be read down to mean that the said provision can be read in the provisions of Disaster Management Act and as such the Appeal is maintainable.

16. Counsel for the respondent, then would invite attention of

this Court to the provisions of sub-section 2 of section 65 and section 66 of the Disaster Management Act, so as to claim that the said provision is a code in itself and the petitioner has failed to follow the mandate provided therein and that being so, the Court below was justified in granting injunction.

17. I have appreciated the rival submissions.

18. At this stage, Counsel for the Respondents makes a motion for withdrawal of the pending appeals in which order impugned granting injunction is passed with liberty to take out appropriate proceedings as is admissible and available in law in view of the fact that impugned notices issued to them which has led to passing of order of injunction are issued under the provisions of Disaster Management Act as is claimed by the Petitioner-Corporation.

19. In view of the aforesaid submissions, Appeals which are pending at the behest of the Respondents-occupiers stand disposed of as withdrawn with liberty to take out appropriate proceedings as is permissible and available in law, treating impugned notices to be under the provisions of Disaster Management Act. Prayer is made by the Counsel for the Respondents that for a period of 10 weeks ad-interim protection

be continued i.e. Petitioner-Corporation be restrained from evicting the Respondents. Said prayer is strenuously opposed by the Ms. Deshmukh, Counsel appearing for the Petitioner-Corporation on the ground that premises are required by the Petitioner-Corporation for the purpose of management of Covid patients.

20. However, considering the fact that license in favour of the Respondents has been continued for a period of 15 years which was to end on 2029, temporary injunction in favour of the Respondents is already ordered same is continued for a period of eight weeks from today.

21. Petition stands disposed of in the above terms.

ANANT
KRISHNA
NAIK

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by ANANT
KRISHNA NAIK
Date: 2022.08.05
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(NITIN W. SAMBRE, J.)