

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3172 OF 2022**

Shri Rajesh Dattu Bujad

....Petitioner

Versus

The Chief Officer, Palghar Municipal Council and ors.Respondents

Mr. P. M. Arjunwadkar, Advocate for the Petitioner.

Mr. Balkrishna D. Joshi, Advocate for Respondent No.1.

Ms. M. S. Bane, Advocate for Respondent No.2.

**CORAM : PRASANNA B. VARALE &
SHRIKANT D. KULKARNI, JJ.**

DATE : 14th JULY, 2022.

P.C. :

1. The principal prayer in the petition is prayer (a) and the same reads thus :

a) This Hon'ble Court may be pleased to issue writ of mandamus or any other appropriate writ or direction in the nature of writ of mandamus and be further pleased to hold and declare that impugned communication and notice dt.25.11.2021 issued by Respondent No.1-Planning Authority is bad, illegal and without jurisdiction and the same is therefore liable to be quashed.

2. A copy of the notice dated 25th November, 2021, is placed on record at Exhibit 'L', page 53. Perusal of the order-sheet shows that considering the submissions advanced on behalf of the petitioner before this Court, an interim order in favour of the petitioner was granted on 20th January, 2022 and the same is still in operation. By way of interim order, respondent No.1 was directed not to act on the letter/notice dated 25th November, 2021.

3. The facts giving rise to the present petition can be summarized as follows :

The petitioner who is a resident of Mahim Road, Valan, District – Palghar, submitted an application for grant of permission to carry out construction on 5th February, 2021. A copy of the said application is placed on record at Exhibit 'H', page 44. Though at page 45, the date is referred to as 4th February, 2021, both learned counsel appearing for the respective parties admitted that this is a typographical error and the application was submitted to the respondent-Council on 5th February, 2021. The petitioner was reasonably expecting that some order would be passed on his application for grant of permission for construction.

The petitioner was faced with notices on 4th February, 2021 and 8th February, 2021. The revised notice directed the petitioner to

remove certain construction in the form of cabins treating this construction as illegal construction. Another document is placed on record in the form of communication dated 15th July, 2021, informing the petitioner the date of hearing scheduled on 24th June, 2021. It seems that the petitioner informed the respondents that he is unable to attend the date of hearing scheduled on 24th June, 2021. As such, the petitioner was informed to attend the next date of hearing scheduled on 19th July, 2021. On 19th July, 2021, the petitioner submitted to the respondents and particularly, the designated officer of respondent – Palghar Municipal Council that he is seeking legal assistance in the matter and, accordingly, 15 days' time be granted to him. These are certain factual aspects of the petition.

4. Now, in the affidavit-in-reply filed through the Chief Officer of Palghar Municipal Council, it is submitted before this Court that on receipt of the application of the petitioner, a communication dated 4th March, 2021, was forwarded to the petitioner pointing out certain deficiencies. Perusal of the communication shows that it was informed to the petitioner that on failure on his part to remove the deficiencies within 15 days, the application would be presumed to be disposed of. In the affidavit-in-reply, it is stated that by letter dated 4th March, 2021, the petitioner was called upon to remove the deficiencies as pointed out in the said letter within period of 15 days, failing which, it was informed that it will be presumed

that the building permission stand rejected (**emphasis supplied**). It is further stated in the affidavit-in-reply that the said letter was also sent to the Architect of the Petitioner Shri Paresh Gharat on his Whats App number. The affidavit then proceeds on taking the ground that in spite of the communication dated 4th March, 2021, the petitioner failed to comply the deficiencies and as such, respondent – Council initiated further action. It is also submitted before this Court that the squad of counsel along with officers and certain employees approached the spot and asked the petitioner to remove the cabins, to which, the petitioner responded that as certain valuable and some goods are stored in the cabins, some time will be needed to remove the cabins and, accordingly, requested for 8 days' time to do the needful. The submission/request of the petitioner was accepted. The petitioner also submitted a written application to the respondent – Council for grant of further 15 days' time. Thus, an attempt is made by learned counsel for respondent -Council before this Court that the petitioner was aware about the communication dated 4th March, 2021 and in spite of having knowledge of such communication, the petitioner failed to remove the deficiencies. The statement in the affidavit in reply of respondent – Council is countered by the petitioner in his rejoinder dated 11th February, 2022. It is stated in the rejoinder at page 88 and 89 as under :

“....I say that I was never communicated by
Respondent No.1 vide it's letter dated 04.03.2021 to

remove the deficiencies within a stipulated period, failure to which, will result in to rejection of building permission. I say that the letter dated 04.03.2021 is an afterthought letter procured by Respondent No.1. I humbly submit that Respondent No.1 may be directed to produce an acknowledgment of alleged Letter dated 04.03.2021. The letter is procured with a sole intention to defeat my claim of building permission.

7. In continuation to averments in the above para, I say and submit that alleged letter dated 04.03.2021 was never served upon me by registered post. As per Section 27 of General Clause Act, 1897 expression “served” necessarily interpreted to be by registered post. Respondent No.1 being a public and responsible body is under mandatory duty to inform me about alleged communication dated 04.03.2021 by registered post...”

It is further stated at page 90 of the rejoinder as under:

“...This substantiates my contention that alleged

letter dated 04.03.2021 or any other letter was never served upon me or on my Architect...".

5. On a specific query to Mr. Joshi, learned counsel for respondent No.1 as to whether there is any material on record to show that the respondent – Council served the letter/communication dated 4th March, 2021 upon the petitioner, Mr. Joshi, on instructions, submitted that there is no such record available with the Council.

6. In view of the specific submission of learned counsel for the petitioner before this Court as well as in the rejoinder filed before this Court that the neither the petitioner nor his architect were served with communication/letter dated 4th March, 2021 and the failure on the part of respondent – Council to show any material that the petitioner or his architect were duly served with the communication/letter dated 4th March, 2021, the only inescapable conclusion, which can be drawn by us is that, in this matter, the respondent – Council failed to follow the principles of natural justice as no opportunity of hearing was granted to the petitioner and without affording such opportunity of hearing, the petitioner is subjected to drastic action causing serious prejudice to the petitioner. In view of these facts, we pass the following order :

1. The petition is allowed. Accordingly, the notice dated 25th November, 2021 is quashed and set-aside.

2. In view of our observations and in view of the fact that the petitioner now has a knowledge of the communication dated 4th March, 2021, the petitioner to submit response in respect of the deficiencies referred to in the communication dated 4th March, 2021, within 15 days from today to respondent – Palghar Municipal Council.

3. On receipt of response from the petitioner within 15 days from today, the respondent – Palghar Municipal Council, by applying its mind to the facts of the matter, considering the relevant provisions and if needed by giving further opportunity of hearing to the petitioner, shall pass an appropriate order within a reasonable period.

4. Needless to state that if the order passed by the Palghar Municipal Council is not in favour of the petitioner, he may avail appropriate remedies as available under law.

With the above observations and directions, the petition stands disposed of.

(SHRIKANT D. KULKARNI, J.)

(PRASANNA B. VARALE, J.)