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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6700 OF 2021**

Apollo Developers Pvt. Ltd. Petitioner.
V/s
Pune Municipal Corporation
and Others Respondents.

Mr. S.C. Naidu i/b Rahul S. Kulkarni for the Petitioner.
Mr. Vishwanath Patil a/w Kewal Ahya for Respondent Nos. 1 to 3/PMC.
Mr. Sagar Bhirange for Respondent No.4.

CORAM: NITIN W. SAMBRE, J.

DATE: APRIL 08, 2022

P.C.:-

- 1] Heard respective Counsels.
- 2] Petitioner/Plaintiff was issued notice styling to be one under Section 260(1A)(a)(b) of the Maharashtra Municipal Corporation Act, 1949 alleging **(a)** Petitioner has carried out construction of Bakery unauthorizedly **(b)** Chimney (exhaust) attached is not as per rules, **(c)** on the ground floor, internal changes are carried, **(d)** D.G set is installed in the front margin without permission and **(e)** in the parking space, three phase electric wiring is installed.

3] The aforesaid notice was served on the Petitioner on 28/6/2018 followed with instructions dated 01/08/2018 wherein it is informed to the Petitioner that above illegal construction viz. **(i)** installation of Chimney at unauthorized place which is causing nuisance to the residents, **(b)** installation of Diesel Generator Set, resulting into blocking of emergency exist and **(c)** three phase wire connection installed in scooter parking space, be removed.

4] Feeling aggrieved, Petitioner preferred Suit being Regular Civil Suit No.1333 of 2018 on the file of Civil Judge, Junior Division, Pune questioning the aforesaid notice dated 01/08/2018. Prayer was made that notice dated 01/08/2018 issued issued to the Petitioner under Section 260(1A)(a)(b) of the Maharashtra Municipal Corporation Act be declared as null and void and Respondents be enjoined from taking action against the Petitioner. Prayer made below Exhibit-5 for grant of temporary injunction came to be rejected by the order impugned dated 17/08/2019 which is confirmed by the learned District Judge, Pune in Misc. Civil Appeal No.300 of 2019 on

29/02/2020. As such, this Petition.

5] Submissions of Mr. Naidu, learned Counsel appearing on behalf of the Petitioner are, Occupation Certificate for suit premises was granted on 13/02/2006. Development Control Rules which were governing development at the relevant time and which were notified on 5/1/1987 in categorical terms permitted operation of small bakery in a structure which is expressly provided at “13.6(iv)(o) small bakeries”. As such, he would urge that even Development Control Rules permitted operation of small bakery in residential area, provided the Petitioner is occupying commercial area. He would urge that, admittedly, Petitioner has installed a bakery in small place in commercial area duly sanctioned by the Respondent/Corporation and that too after obtaining sanctions from competent authorities. In such an eventuality claim put-forth that installation of Chimney, three phase wiring and Diesel Generator Set is illegal cannot be sustained. He would further urge that both the Courts below committed an error of law in not appreciating the very provisions of Development Control Rules as referred to above and also the permissions which are granted

by the authorities to the Petitioner. That being so, he would urge that orders impugned are liable to be quashed and set aside, thereby directing temporary injunction in favour of the Petitioner.

6] While countering the aforesaid submissions, Mr. Patil, learned Counsel for Respondent Nos. 1 to 3 would invite attention of this Court to Development Control Rules referred to above. According to him, clause (xiii) of Rule M-2.2.1 provides that user of premises as a bakery is permitted, provided there are no upper floors and construction area should not exceed 75 sq. meters, employing not more than nine persons and energy use should not exceed 4 k.w. According to him, apart from the fact that Chimney installed by the Petitioner is causing not only air pollution but also creating nuisance to the residents of the building. Hence residents of the building have made complaints to the Respondent/Corporation to that effect which has prompted initiation of impugned notice. He would urge that notice issued to the Petitioner is in tune with the provisions of the Maharashtra Municipal Corporation Act. Apart from above, he would urge that concurrent findings recorded by the Courts below are based

on appreciation of evidence, provisions referred to above have been duly considered and that being so, this Court should dismiss the Petition.

7] I have considered the submissions.

8] It is an admitted fact on record that premises in which Petitioner is operating a bakery is meant for commercial use which is duly sanctioned by the Respondent/Corporation. Before starting business of bakery, Petitioner has taken appropriate sanctions under the Shops and Establishments Act for the operation of a bakery from Food and Drugs Administration, Fire Officer of Respondent/Corporation, Health Department of Respondent/Corporation and also permission to install Diesel Generator from the Department of Energy, Government of Maharashtra with approved location plan.

9] It is worth to mention that provisions of Development Control Rules, particularly provisions contained in Part-II which deals with requirements of site, specifically permit the Petitioner to operate a

small bakery in commercial premises. Considering the existence of such Development Control Rules, it appears that Food and Drug Administration and also Health Department have permitted the Petitioner to operate a bakery that too upon permission from the competent Department of the State Government for installation of Diesel Generator Set.

10] In the aforesaid backdrop, it cannot be said that the Petitioner has acted contrary to the Development Control Rules of 1987, thereby conducting himself while operating bakery business in contravention to the provisions of Section 260 of the Maharashtra Municipal Corporation Act.

11] Apart from above, notice issued under Section 260 of the said Act is too vague to answer as the notice does not contain specific attributions as to the violations committed by the Petitioner. Fact remains that final order/instructions to remove unauthorized construction speaks of different grounds than those which are mentioned in the initial notice dated 26/06/2018 which prima facie demonstrates arbitrary approach on the part of officials of the

Respondent/Corporation. For example, in the notice dated 28/06/2018, it is mentioned that location of Chimney is not as per Rules. However, without specifying the Rules or violation made, in the final notice it is mentioned that Chimney (exhaust) emits poisonous gases which is dangerous for public residing in the said building. Such ground is without any legal basis. As regards allegations in respect of Diesel Generator is concerned, in the initial notice it is mentioned that D.G. Set is installed without permission when, in fact, Energy Department has already permitted the Petitioner to install the Generator. However, in the final notice, it is mentioned that Diesel Generator Set is installed in such a way which blocks the emergency exist road, which was not the case when the first notice was issued. Even the second notice which is impugned in the suit is also not specifying the violation of Development Control Rules. As such, there are unexplained improvements and deviations in the final notice dated 01/08/2018 which has caused substantial prejudice to the Petitioner.

12] In the aforesaid backdrop, if we test the evidence discussed in

the light of the provisions of Development Control Rules referred to above and the Occupancy Certificate dated 13/02/2006, it can be inferred that both the Courts below have failed to consider the aforesaid evidence and the issues which demonstrate not only prima facie case but also balance of convenience in favour of the Petitioner.

13] In case, if the Petitioner who operates bakery business in accordance with law as discussed above is asked to shut down the same by virtue of issuance of notice impugned, definitely same will affect the livelihood of the Petitioner. That being so, in my opinion, case for grant of injunction is made out.

14] As such, both the impugned orders; one dated 17/08/2019 passed below Exhibit-5 in Regular Civil Suit No.1333 of 2018 and the other dated 29/02/2020 passed in Misc. Civil Appeal No.300 of 2019 are hereby quashed and set aside. Application-Exhibit-5 stands allowed.

15] Petition stands disposed of in the above terms.

16] However, it is clarified that Respondent/Corporation or such other public authorities are not precluded by this order from taking action against the Petitioner, in case if provisions of Air Pollution Control Act or such other Enactments are violated.

(NITIN W. SAMBRE, J.)