

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9742 OF 2022

Arjun Girjappa Chinchwale

...Petitioner

vs.

Pune Municipal Corporation, Pune

...Respondent

....

Mr. A.V. Anturkar, Senior Advocate, i/b. Mr. Sugandh Deshmukh, for
the Petitioner.

Mr. V. Patil, for the Respondent.

....

CORAM : S.M. MODAK, J.

DATE : 12 AUGUST 2022

P.C.:

Heard Mr. Anturkar, learned Senior Advocate for the
Petitioner and learned Advocate Mr. Vishwanath Patil for the
Corporation by consent finally.

2. Urgent circulation of this writ petition is sought for the
reason that the Respondent Corporation has taken in writing from the
Petitioner that he will remove himself from the open plot of land in
question. Said copy is filed on page 57. It is dated 5 August 2022.

3. The order passed by the appellate authority dated 29 June

2022 in Civil Appeal PPE No.05/2021 is challenged by way of this writ petition. As per the said order, the learned District Judge has observed that there was no need to stay the impugned notice. The said order was passed during the pendency of the appeal and now the appeal is fixed on 30 August 2022 for further hearing. By way of the said appeal, the Petitioner has challenged the validity of the notice dated 28 October 2021 issued by the property department of the Corporation. The Petitioner was asked to pay arrears of the rent amounting to Rs.68,24,544/-. The letter says that there was a periodical increase in the rent and it is as per the new rates fixed as per 2008 valuation. The Petitioner had challenged the validity of the said notice on various grounds. When the interim prayers to stay that notice was heard, predominantly the learned District Judge has not granted interim relief for the reason that eviction as per the provisions of Maharashtra Provincial Corporation Act is not started. It is observed that there is a detailed procedure of eviction involving of written statement and recording of evidence. Learned District Judge wants to suggest that if that procedure will be followed, the Petitioner will certainly get an opportunity to raise his grievances.

4. My attention is invited to a reply filed on behalf of the Corporation and more specifically para no.22 of said reply dated 21 June 2020. It reads as follows:-

“22- The present respondent has not issued impugned

notice under the provisions of Section 81B of MMC Act. Hence, the appeal filed by appellant is pre-matured and hence, deserves to be dismissed with cost.”

5. According to learned Senior Advocate, the learned District Judge, while refusing the interim relief, has considered the stand of the Corporation that the notice in question was not issued under Section 81B of Maharashtra Municipal Corporation Act.

6. During the arguments, learned Advocate Mr. Vishwanath Patil for the Corporation submitted that in fact the Corporation has passed eviction order dated 13 April 2022. On instructions to do the same, he has placed that order on record. Earlier to that there was also correspondence dated 17 January 2022 and 30 March 2022 addressed to the Petitioner informing him about the possible action and to participate in the hearing. According to learned Advocate Mr. Patil, the Petitioner has also participated and expressed willingness to pay the rent at old rate and sought time. According to him, the Petitioner ought to have informed this fact to learned District Judge. He also submitted that granting interim reliefs for the reason that the Petitioner wants to challenge that subsequent order by way of separate appeal, it will be outside the scope of the present appeal.

7. Learned Senior Advocate Mr. Anturkar submitted that the Corporation does not come with the plea that this order is served on the Petitioner. He also emphasised that the fact of issuance of the eviction

order was not intimated to the learned District Judge. If it could have been intimated, the Petitioner might have initiated proper proceedings uptill now.

8. Learned Senior Advocate seeks some interim protection for the reason that the Petitioner may challenge that order by way of appropriate proceedings. On instructions of the Petitioner, he had also shown readiness to deposit certain amount towards the arrears as claimed in the notice dated 28 October 2021.

9. It is true that the Court has to consider this subsequent development about issuance of eviction order. There is already a letter on page 57, thereby the Petitioner has sought 7 days' time to vacate the plot in question. Learned Senior Advocate also submitted that by exercising power under Article 226 and 227 of the Constitution, the Court can certainly grant interim protection.

10. In view of this subsequent development, this Court feels that no purpose will be served by hearing this writ petition and more so for the reason that the Petitioner has expressed desire to challenge the eviction order by initiating appropriate proceedings. As already eviction order is passed, the interim protection can be given only by putting certain conditions. It includes deposit of certain amount out of arrears of rent. This Court feels that the Petitioner can be directed to deposit an amount of Rs.30 lakhs. This Court has not expressed any opinion

about the validity of the eviction order and also about the correctness about increase in rent. The proper authority is at liberty to take decision on those issues. In view of that, the following order is passed:

ORDER

- (i) The Respondent is restrained from taking further action in pursuance of the eviction order dated 13 April 2022 for a period of 10 days from today, subject to following condition:
 - (a) The Petitioner depositing Rs.30 lakhs within period of two weeks to the Corporation.
- (ii) Subject to above observations the writ petition is disposed of.
- (iii) It is made clear that all contentions of the parties are kept open. If at all the Petitioner wants extension of the stay granted today, he is at liberty to request the appropriate authorities on filing of appropriate proceedings and it can be decided on its own merits.

(S.M. MODAK, J.)