

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1088 OF 2017

Mahesh Daji Salunkhe

.. Petitioner

v/s.

The Municipal Corporation of
Greater Bombay & Ors.

.. Respondents

Mr. Akshay Kapadia a/w M.R. Sherekar for the petitioner.

Mr. Anoop Patil a/w Ms. Oorja Dhond i/b. Mr. S.K. Sonawane for
respondent nos.1 to 3-MCGM.

Mr. Hemant Haryan, AGP, for the State-respondent nos.4 to 6.

CORAM : R.D. DHANUKA &

KAMAL KHATA, JJ.

DATED : 17TH OCTOBER, 2022.

P.C. :

1. Rule. Mr. Patil, the learned counsel for respondent nos.1 to 3
waives service. Learned AGP waives service for respondent nos.4
to 6.

2. Leave to amend is granted to delete respondent no.6 from the
cause title of this petition. Amendment to be carried out by 5.00

p.m. tomorrow. Re-verification is dispensed with.

3. By this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for a writ of certiorari for quashing and setting aside the order dated 3rd April, 2017 issued by respondent no.3 revoking the order dated 10th March, 2017.
4. It is not in dispute that there was a permission granted on 10th March, 2017 in favour of the petitioner to carry out reconstruction of the writ structure on certain Terms and Conditions. Before the petitioner could carry out reconstruction, the Municipal Corporation by letter dated 3rd April, 2017 revoked the said permission. In the said letter, it is stated that a fresh hearing will be granted to the petitioner if the petitioner makes a representation to the Municipal Corporation.
5. It is submitted by the learned counsel for the petitioner that neither any show cause notice was given nor any hearing was granted by the Assistant Commissioner 'N' Ward, before revoking the permission that was already granted as far back as on 10th March, 2017 to carry out reconstruction.

6. Mr. Patil, the learned counsel for the Municipal Corporation on the other hand submitted that the petitioner had applied on 5th April, 2017 for a permission to seek return of the material which was taken away by the Municipal Corporation after demolition of the partly reconstructed structure on the payment of necessary charges. He submitted that on the request of the petitioner, the Municipal Corporation had already allowed the petitioner to remove the material on the payment of the demolition charges. The petitioner now cannot be allowed to impugn the order of revocation of the permission by the letter dated 3rd April, 2017.
7. The learned counsel for the Municipal Corporation did not dispute that no show cause notice was issued upon the petitioner before revocation of the permission granted on 10th March, 2017 and no personal hearing was granted by the petitioner before passing the impugned order dated 3rd April, 2017.
8. In our view, the Municipal Corporation thus could not revoke the permission already granted without giving any show cause notice and/or granting a personal hearing to the petitioner. The impugned order dated 3rd April, 2017 deserves to be quashed and set aside on this ground itself.

9. Insofar as the submission of Mr. Patil, the learned counsel for the Municipal Corporation, that the petitioner after having already paid the demolition charges for removal of the debris, cannot be allowed to impugn the order dated 3rd April, 2017 is concerned, in our view, there is no merit in this submission of the learned counsel.

10. Admittedly, the material of the demolished building was the property of the petitioner in respect of which the request was made to return the material on the payment of demolition charges. The payment of demolition charges for the return of material would not stop the petitioner from challenging the order of revocation.

11. Accordingly, we pass the following order:

- (i) Writ petition is made absolute in terms of prayer clause (a).
- (ii) We, however, grant permission to the Municipal Corporation to issue a show cause notice to the petitioner as to why the permission dated 10th March, 2017 shall not be recalled.
- (iii) The Municipal Corporation shall indicate the causes of the grounds on which the Corporation seeks to revoke the said

permission dated 10th March, 2017.

- (iv) A show cause notice to be issued, if any, within four weeks from today.
- (v) The petitioner would be at liberty to reply to the show cause notice and to file documents, if necessary, within four weeks thereafter.
- (vi) The Assistant Commissioner shall pass an order after granting a personal hearing to the petitioner and after considering the reply that would be filed by the petitioner and shall pass an order on the said show cause notice within four weeks from the date of the petitioner being granted a personal hearing without being influenced by the observations made and the conclusion drawn in the impugned order of revocation dated 3rd April, 2017.
- (vii) If the show cause notice is withdrawn, we direct the Municipal Corporation to consider the grant of permission for carrying out reconstruction on the Terms and Conditions in accordance with law.
- (viii) If the show cause notice is made absolute, the petitioner

would be at liberty to file appropriate proceedings as permissible in law.

(ix) It is made clear that this Court has not expressed any views on the merits of the show cause notice that would be issued by the Municipal Corporation or the contentions as raised by the petitioner on the merits in this petition.

(x) All contentions of both the parties are kept open.

(xi) Municipal Corporation to inform the petitioner about the name and the designation of the Officer who would be granting a personal hearing to the petitioner within two weeks from today.

(xii) It is made clear that the petitioner will not carry out the reconstruction on the writ property till the show cause notice issued by the Municipal Corporation is disposed off and for a period of four weeks from the date of such order.

(KAMAL KHATA, J.)

(R.D.DHANUKA, J.)