

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

...

WRIT PETITION NO. 2225 OF 2022

Shaikh Naved Shaikh Ibrahim

..Petitioner

versus

Akola Municipal Corporation and another.

..Respondents

Mr.A.R.Deshpande, Advocate for the Petitioner

Mr. A.S.Thotange, Advocate for Respondent Nos. 1 and 2

...

CORAM: NITIN JAMDAR &
ANIL L. PANSARE,JJ
DATED : 26 APRIL 2022.

P.C. :

Heard learned Counsel for the parties. Taken up for disposal.

2. The property which is subject-matter of this Petition i.e. Nazul Plot No.4, Sheet No.37A in Layout Plot No.5 admeasuring about 4000 square feet, situated at Mankarna Plots, Akola, is owned by the Respondent-Municipal Corporation. The Petitioner is currently occupying this property, whose occupation and the construction put up is objected to by the Respondent-Corporation. A notice is given by the Respondent-Corporation to the Petitioner on 13 April 2022, directing the Petitioner to remove the

construction put up on the said plot. This order is challenged in the present petition.

3. According to the Respondent-Corporation, the Petitioner has not only put up an unauthorised construction but his occupation on the land owned by the Corporation, is also illegal. The Petitioner has filed a civil suit bearing No.277/2017 in respect of the action of the Respondent-Corporation for demolition of the structure. The Petitioner took out an application for temporary injunction which was rejected by the trial Court. In Miscellaneous Appeal filed by the Petitioner, the Appellate Court granted temporary injunction stating that if the Respondents are proceeding to demolish the structure they should do so after following due process of law.

4. During the pendency of the suit, the Respondent-Corporation took possession of the property and upon an application below Exh.26 in the pending suit filed by the Petitioner, the Respondent-Corporation is directed to restore the possession to the Petitioner. The action of eviction taken by the Respondent-Corporation is also challenged in appeal by the Petitioner under section 81-F of the Maharashtra Municipal Corporations Act, 1949 in which an interim order of status quo is passed. This appeal is also pending.

5. It is in this background that the impugned order has been passed.

6. Reply-affidavit is filed on behalf of the Corporation. The learned Counsel for the parties state that since the proceedings are pending before the Civil Court and the District Judge, as narrated above, it would be appropriate that the action proposed by the Respondent-Corporation should be dependent on these pending proceedings. If the parties are already before the civil court and in the statutory appeal, the Respondent-Corporation which has been granted liberty to proceed as per law, should await the decision of the statutory remedies availed of by the Petitioner. The learned Counsel for the Respondent-Corporation on instructions states that those action would be deferred till appropriate orders are passed by the learned Civil Judge or the District Judge and requests that these proceedings be expedited.

7. Considering the stand taken as above, it is not necessary to pass further orders in this petition. It is open to the parties to place the copies of the orders before the learned District Judge and/or learned Civil Judge if they intend to request the learned Judges to expedite the proceedings. Needless to state that the pending proceedings will be decided on its own merits.

8. Writ Petition is disposed of in above terms.

[ANIL L. PANSARE,J.]

[NITIN JAMDAR,J.]

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