

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8246 OF 2021

Arun Shivaji Shinde	] .. Petitioner
Vs.	
1. The Sangli-Miraj-Kupwad Municipal Corporation	]
2. Smt. Smriti Patil, Dy. Commissioner,	]
Sangli-Miraj-Kupwad Municipal Corporation	]
3. Shri. S.S. Kharat, the Assistant Commissioner,	]
Sangli-Miraj-Kupwad Municipal Corporation	]
4. Shri Dilip Ghorpade, Chief of Demolition Squad,	]
Sangli-Miraj-Kupwad Municipal Corporation	]
5. Shri Irshad Shaukatali Magdum,	]
Sangli-Miraj-Kupwad Municipal Corporation	] .. Respondents

Mr. Prajakt M. Arjunwadkar for the Petitioner.

Mr. Shivaji A. Masal for Respondent Nos.1 to 4-Municipal Corporation.

CORAM : SUNIL B. SHUKRE & RAJESH S. PATIL, JJ

DATE : 11TH JULY, 2023.

ORAL JUDGMENT : { Per Sunil B. Shukre, J.}

1. RULE. Rule is made returnable forthwith. Heard finally, by consent of learned counsel for the respective parties.

2. It is an admitted fact that the petitioner is the tenant of respondent no.5. His grievance is that the shed in question, into which he was inducted as tenant by the landlord i.e. respondent no.5, in terms of the consent terms recorded in

Regular Civil Suit No.206 of 2004, was illegally demolished by the respondent-Municipal Corporation, even without following the procedure prescribed under Section 260 of the Maharashtra Municipal Corporations Act, 1949 (*"Act of 1949", for short*), in the sense that neither any notice, as contemplated under clause (a) of sub-section (1A), nor any hearing, as envisaged under clause (b) of sub-section (1A) of Section 260 of the Act of 1949, was issued and granted to the petitioner. According to learned counsel for the petitioner, such written notice as well as hearing, both, were necessary in the present case, because the petitioner is the person directly affected by the demolition of the tenanted structure by the Municipal Corporation. He, therefore, seeks such reliefs as declaration that (i) the action of demolition of the tenanted structure, which he has described to be a Gala No.5, was malafide and arbitrary, (ii) a direction to be issued to the Municipal Corporation to initiate disciplinary action against the concerned officers of the Municipal Corporation for illegally demolishing the structure, (iii) granting compensation to the petitioner for the loss suffered by him and, (iv) a direction for reconstruction of the tenanted Gala by the Municipal Corporation.

3. Learned counsel for the Municipal Corporation, opposing the petition, submits that whatever the action the Municipal Corporation has taken in the present matter is strictly in accordance with law and, therefore, he submits that there is no merit in the petition.

4. On going through the applicable provisions of law, as contained in

Section 260 of the Act of 1949, we find that there is no substance in the argument of learned counsel for the petitioner and great merit in the submissions of learned counsel for the Municipal Corporation.

5. In view of the reliance placed upon the provisions of law, as contained in clauses (a) and (b) of sub-section (1A) of Section 260 of the Act of 1949, by the learned counsel for the petitioner, it is necessary for us to consider in depth these provisions of law and for this purpose, clauses (a) and (b) of sub-section (1A) of Section 260 of the Act of 1949 are reproduced as under :-

“260. Proceedings to be taken in respect of building or work commenced contrary to rules or bye-laws :-

(1). The Commissioner shall, by notification in the *Official Gazette*,

(1A). If the erection of any building or the execution of any such work as is described in Section 254 is commenced or carried out contrary to the provisions of the rules or bye-laws, the Designated Officer unless he deems it necessary to take proceedings in respect of such building or work under Section 264, shall -

(a) by written notice, require the person who is erecting such building or executing such work or has erected such building or executed such work on or before such day as shall be specified in such notice, by a

statement in writing subscribed by him or by an agent duly authorised by him in that behalf and addressed to the Designated Officer, to show sufficient cause why such building or work shall not be removed, altered or pulled down, or

- (b) shall require the said person on such day and at such time and place as shall be specified in such notice to attend personally or by an agent duly authorised by him in that behalf, and show sufficient cause why such building or work shall not be removed, altered or pulled down.

(2). If such person shall fail to show sufficient cause,.....”

6. Upon a bare reading of the above referred provisions of law, what becomes clear is that obligation to issue a written notice and further obligation to grant hearing, cast upon the Municipal Corporation, is towards a person, who is erecting a building or executing any work or has erected a building or executed any work, which is described in Section 254 and contrary to Section 254 of the Act of 1949. In other words, notice, as contemplated under clause (a) of sub-section (1A) of Section 260 of the Act of 1949, would have to be issued by the Municipal Corporation only to a person who is in the process of erecting a work or who has erected the work, as described in Section 254 and in violation of the requirement of Section 254 of the Act of 1949 and to no other

person. Same is true about grant of personal hearing to such a person, as prescribed under clause (b) of sub-section (1A) of Section 260 of the Act of 1949.

7. Petitioner, admittedly, is not the person who has erected the tenanted Gala No.5, which has been demolished. It is the case of the petitioner that Gala No.5 was erected by respondent no.5 and it was taken on rent by him from respondent no.5 and it was after that, the impugned action had taken place. It then follows that the petitioner cannot rest his challenge made in this petition on the provisions of law contained in sub-section (1A) of Section 260 of the Act of 1949 and that be so, this petition would be devoid of any merits.

8. Learned counsel for the petitioner submits that no notice under Section 260 of the Act of 1949 has been issued even to respondent no.5—the owner and the person who has actually erected Gala No.5. But, we must say that no grievance in this regard has been made by respondent no.5 and there is no authority given by respondent no.5 to the petitioner to pursue the cause of action that may perhaps have accrued to respondent no.5, about which there is, however, no certainty.

9. In this view of the matter, this petition deserves to be dismissed. Petition accordingly stands dismissed. Rule is discharged.

[RAJESH S. PATIL, J.]

[SUNIL B. SHUKRE, J.]