

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5254 OF 2021

Sai Shraddha Enterprises ...Petitioner
Versus
The Commissioner The Bhiwandi Nizampur ...Respondents
Municipal Corporation Thane & Ors

Mr Rajiv Patil, Senior Advocate, i/b Abhijeet Kandarkar, for the
Petitioner.
Ms Sucheta D Ghaisas, for the Respondent.

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CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 5th September 2023

PC:-

1. Rule.

2. The Petition succeeds on a single solitary narrow point which is that the impugned action of demolition is taken without affording the Petitioner any hearing at all and on a completely incorrect and untenable basis that the Petitioner was not present at the so-called hearing conducted by the Assistant Commissioner of the Bhiwandi Nizampur Municipal Corporation (“BNMC”). Several notices were issued to the Petitioner saying that his construction or part of it on City Survey Nos. 8415 to 8431 at Gauripada, Taluka Bhiwandi, District Thane was illegal. There is no doubt that the Petitioner was

told to remain present for a hearing on 10th July 2019 at 4.00 pm. The Petitioner did remain present. The Assistant Commissioner who was to hold a hearing did not. He was apparently busy elsewhere. After waiting for some time, the Petitioner left the Assistant Commissioner's office but took care to write a note saying that the hearing could not take place and asked that he be informed of the fresh date. This notice was received at the Assistant Commissioner's office on 10th July 2019 at 5.00 pm. This tells us that the Petitioner waited for an hour between 4.00 pm and 5.00 pm; possibly more but not less.

3. What happened then is astounding. The impugned order came to be passed the very next day on 11th July 2019. A copy is at Exhibit "K" at pages 70 and 71. This notice is captioned as a 'decision after hearing' or a सुनावणी निर्णय. There was certainly a निर्णय. There was no सुनावणी. The third line says that the Petitioner failed to remain present on 11th July 2019 at 4.00 pm. But no notice was issued to the Petitioner between 5.00 pm on 10th July 2019 and 4.00 pm on 11th July 2019 asking him to remain present.

4. The entire impugned notice and all actions thereafter are vitiated for breach of fundamental principles of natural justice. It is not open to the municipal authorities to conduct themselves in this fashion. It is certainly not open to them to try and create an entirely incorrect record in this fashion by alleging or contending that there was a hearing, when there was not, and that the Petitioner was absent, concealing the fact that the Petitioner had received no notice at all of the hearing at 4.00 pm on 11th July 2019.

5. The notice is quashed and set aside.
6. Mr Patil complains that the result of this is that the works have been demolished.
7. Thus, we will have to consider prayer clauses (b), (c), (d) and (e) of the Petition which read as follows:
 - “(b) to issue a Writ of Certiorari or any other appropriate Writ, order or direction in the like nature and to quash and set aside the impugned Order dated 11/7/2019 bearing Outward No. BNSMNP/SVV/PSK41247 passed by the Assistant Commissioner, Prabhag Samiti No./4, Bhiwandi Nizampur Municipal Corporation;
 - (c) to issue a Writ of Mandamus or any other appropriate Writ, Order or direction in the like nature and to direct the Respondent No.1 to allow the Petitioner to reconstruct the flat and 3 galas demolished pursuant to the order dated 11/7/2019 viz. flat on 8th floor, B wing and 3 galas on the ground floor;
 - (d) to issue a Writ of Mandamus or any other appropriate Writ, Order or direction to the Respondent No.1 to hold enquiry against the officers responsible for such illegal demolition pursuant to the order dated 11/7/2019 and to take action against them as per law;
 - (e) to issue a Writ of Mandamus or any other appropriate Writ, Order or direction in the like nature and to appoint an Architect for valuation of the loss caused to the Petitioner and to direct the Respondent No.1 to pay the Compensation as per the report of the Architecture.”
8. We make Rule absolute in terms of prayer clauses (b) and (c).

9. We are not inclined to grant the relief in terms of prayer clause (d) because we do not see what benefit is to be gained by it.

10. As to the question of the loss caused to the Petitioner if any, the Petitioner is at liberty to adopt suitable proceedings in that behalf. The time spent in prosecuting this Petition will be excluded for the purposes of limitation under Section 14 of the Limitation Act, 1963.

11. We make it clear that the Petitioner will be entitled to restore his flat and galas to the position that they stood as on 10/11th July 2019 with no additions or alterations. The Municipal Corporation is at liberty to issue a fresh notice in respect of any irregular or unauthorised works and to proceed with that notice but strictly in accordance with law. We make it clear that if any notice of a hearing is to be given to the Petitioner, that notice must allow for at least seven clear days before the hearing is conducted.

12. The Petition is disposed of in these terms with no order as to costs.

13. We have not expressed any opinion on the merits of the construction or of the notices and whether the works done by the Petitioner are or were authorised, irregular, regularizable or utterly illegal. All contentions in that regard are left open.

(Kamal Khata, J)

(G. S. Patel, J)