

SA Pathan

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11019 OF 2023

Rahim Ibrahim Kachi

... Petitioner

V/s.

Panvel Municipal Corporation

Through

Commissioner & Anr.

... Respondents

Dr. Uday P Warunjikar i/by Mr. Sumit S Kate, for the
Petitioner.

Mr. A. S. Rao, for the Respondent.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 7, 2023

P.C.:

1. Challenge in this petition is to the order passed by the Courts below rejecting application for temporary injunction filed by the petitioner/plaintiff in suit challenging notice issued under Section 478 (1) of the Maharashtra Municipal Corporation Act, 1949. It appears that the respondent issued notice under Section 478 (1) of the Maharashtra Municipal Corporation Act, 1949 to the plaintiff on 10 December 2021. The petitioner filed Regular Civil Suit No.261 of 2022 on 26 July 2022. In the said suit, the petitioner filed application below Exhibit 5 seeking temporary injunction against the Municipal Corporation restraining them from acting notice dated 10 December 2021. Both the Courts below rejected the application, recording finding that suit is not maintainable for

absence of prior notice as provided under Section 487 of the Maharashtra Municipal Corporation Act.

2. Considering frame of suit, it was obligatory on the Courts below to consider case of the plaintiff on merits. Courts below were required to record the finding as to whether the construction which is subject matter of impugned notice is legal or not. Without adjudicating on the said issue, the Courts below could not have rejected temporary injunction application filed by the plaintiff. Hence, following order:

a) The impugned orders passed by the Courts below dated 20 January 2023 and 4 May 2023 are quashed and set aside.

b) The application below Exhibit 5 is restored to the file of the Trial Court.

c) The Trial Court shall decide the said application on its own merits and uninfluenced by observations made in the impugned order(s) or / and in the present order.

3. The writ petition stands disposed of. No costs.

4. For the period of two weeks, no action in furtherance of notice of demolition shall be taken against the plaintiff.

(AMIT BORKAR, J.)