

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

WRIT PETITION NO.833 OF 2019

Mohd. Usman Abdul Aziz Ansari .. Petitioner

Vs.

The Municipal Commissioner,
Mumbai Municipal Corporation, Mumbai & Ors. .. Respondents

Mr. K.H. Giri, with Ms. Dhinika Jain & Mr. Pratik Yadav, for the Petitioner.

Mr. Ajit Kenjale, with Mr. Kunal Waghmare, i/by Mr. Sunil K. Sonawane, for
Respondent Nos.1 and 2-MMC.

Mr. T.D. Deshmukh for Respondent No.3-MHADA.

Mr. Himanshu Takke, AGP for Respondent No.4-State.

**CORAM : A.S. CHANDURKAR &
M.W. CHANDWANI, JJ**

DATE : 7TH FEBRUARY, 2023.

P.C. :

1. Heard learned counsel for the parties.
2. The challenge raised in this Writ Petition is to the communication dated 26th February 2019, that has been issued by the Assistant Commissioner, Mumbai Municipal Corporation, holding that the documents produced by the petitioner are subsequent to 1st January 1962, which is the datum line for treating the structure in question to be eligible for protection.
3. It is the case of the petitioner that his father was in use and occupation of the subject shop premises prior to 1980. By an application dated 15th January

1980, his father had sought permission to repair the shop premises. The said premises however came to be demolished by the respondent-Municipal Authorities on 13th December 2017, without any notice being given to the petitioner. The petitioner had filed Writ Petition No.831 of 2018 raising a grievance in that regard. This Court by order dated 29th October 2018, granted an opportunity to the petitioner to submit requisite documents to the Designated Authority of the respondent-Municipal Corporation and the said Authority was directed to take a decision within a period of four weeks.

4. Pursuant thereto, on 1st November 2018, the petitioner appeared before the Designated Officer of the respondent-Municipal Corporation and submitted about forty-six documents in support of his stand. The Assistant Commissioner of the respondent-Municipal Corporation considered the said documents and by the communication dated 26th February 2019 found that none of them were prior to the datum line, which is 1st January 1962. Since it was found that the structure was on a foot-path, it could not be treated as eligible. It is this communication that is challenged by the petitioner.

5. The learned counsel for the petitioner submits that the demolition of the shop premises has been effected without grant of any prior opportunity to the petitioner. There was no justification on the part of the respondent-Municipal Authority in demolishing the structure that had been erected after obtaining necessary sanction. The Assistant Commissioner further failed to consider all the documents that were submitted by the petitioner and merely by observing

that the structure was constructed after 1st January 1962 has held the same to be unauthorized. Placing reliance on the decisions of the Punjab and Haryana High Court in *Prem Mohan Kalra Vs. State of Haryana and Ors.*¹, Andhra Pradesh High Court in *M. Rajkumar and Ors. Vs. The Excise Superintendent, Hyderabad and Ors.*² and of this court in *Vadilal Maganlal Trevadia Vs. Bombay Municipal Corporation and Ors.*³, it is urged that for absence of a show cause notice, the demolition in question is unauthorized. The principles of natural justice had been violated. It is thus prayed that the respondent nos.1 and 2-Municipal Authorities will have to be directed to reimburse the costs of reconstruction of the same.

6. The learned counsel for the respondent-Municipal Commissioner opposed the aforesaid submissions. He referred to the affidavit-in-reply filed on behalf of respondent nos.1 and 2. According to him, since the structure in question was located on the foot-path on the North side of Nehru Road, Vakola, Santacruz (East), Mumbai, it was unauthorized. In exercise of the powers conferred by Section 314 of the Mumbai Municipal Corporation Act, 1888, the structure was demolished. Pursuant to the order passed in Writ Petition No.831 of 2018, due opportunity was given to the petitioner and after considering all his documents, it was found that the petitioner had no legal right to occupy the structure. Hence, no interference with the order was called for.

1 *AIR 2011 Punjab and Haryana 161*

2 *AIR 1992 Andhra Pradesh 143*

3 *AIR OnLine 2020 Bom 634*

7. The learned counsel for the respondent no.3-MHADA also opposed the Writ Petition.

8. On hearing the learned counsel for the parties and after perusing the documents on record, we find that the demolition of the structure in question took place on 13th December 2017. Being aggrieved, the petitioner had filed Writ Petition No.831 of 2018 and an opportunity of hearing was directed to be granted to him. Pursuant thereto, the petitioner, on 1st November 2018, submitted numerous documents before the Assistant Commissioner, who considered the same and found that the documents were not prior to the datum line, which is 1st January 1962. It can be seen that the demolition in question has been carried out in view of Section 314 of the Act of 1888. By granting the petitioner an opportunity of post-decisional hearing, we find that the principles of natural justice have been satisfied. It would have been a different matter if the petitioner would have produced some documents prior to 1st January 1962 to indicate his eligibility. Admittedly, no such document has been produced by the petitioner. In this backdrop, the decisions relied upon by the learned counsel for the petitioner do not support his contentions.

9. For the aforesaid reasons, we do not find any reason to interfere with the communication dated 26th February 2019. Writ Petition is thus dismissed with no order as to costs.

[M.W. CHANDWANI, J.]

[A.S. CHANDURKAR, J.]