



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

...

CIVIL REVISION APPLICATION NO.61/2022

Akola Municipal Corporation and another
versus

..Applicant/s

1) Ananda s/o Pralhad Palhade and others

..Respondent/s

.....
Mr. S.V. Sohoni, Adv. for the applicant/s
.....

CORAM: ANIL L. PANSARE, J.

DATED : 23rd August, 2023.

PC:

Heard.

2. The correctness, legality, validity and propriety of the order passed by the learned 3rd Joint Civil Judge, Junior Division, Akola is being tested here. The respondents herein are the plaintiffs before the trial Court. They have filed a suit for declaration and permanent injunction. The declaration as is sought is to the action of defendants of demolishing their shops, which according to the plaintiffs is absolutely illegal, arbitrary and high handed. Further, a declaration is sought that communication dated 6th October, 2020 and oral communication dated 5.01.2021, both are illegal.

3. The defendants/applicants had filed an application for rejection of plaint under O. VII Rule 11 of the Civil Procedure Code, (in short "the Code"), on the ground that the suit is barred by law, viz. Section 433A of the Maharashtra Municipal Corporation Act and is filed without the cause.

4. The coordinate Bench of this Court in similar such circumstances, in the case of Commissioner, Akola Municipal Corporation vs. Bhalchandra Govind Mahashabde reported in 2013 (4) Mh.L.J. 45, has held in para no.7 as under:-

“7. Now, Section 433A of the Maharashtra Municipal Corporation Act creating a bar of jurisdiction of the Civil Court, being relevant, is reproduced below :

“433-A: Bar of jurisdiction - Save as otherwise provided in this Act any notice issued, order passed or direction issued by the Designated Officer, under Sections 260, 261, 264, 267 or 478 shall not be questioned in any suit or other legal proceedings.”

Undoubtedly, if the plaintiff comes before the Civil Court alleging that a notice issued under Section 260 of the said Act is illegal in any manner and seeks a declaration to that effect, then the bar of jurisdiction to try such a suit under section 433A of the said Act shall operate. However nonetheless, the inherent jurisdiction of a Civil Court in a suit challenging the notice under section 260 of the said Act, on the limited grounds, viz, that the act of issuance of such notice is nullity, or that while issuing such notice, the mandatory provisions of the said Act have not been complied with, or that the Authority issuing such a notice has not acted in conformity with the fundamental judicial procedure, or that it is an abuse of exercise of power, or that the offending act has not been done in good faith, remains intact, in view of the afore-stated law laid down in judicial pronouncement. The Civil Court is not precluded of its inherent jurisdiction to entertain and decide such challenge to a notice under section 260 of the said Act, on such limited grounds, particularly when there is no forum available under the said Act to ventilate such grievances in respect of it. Hence, the question of law at Serial No.(i) is answered accordingly.”

5. In the present case the plaintiffs have averred in the plaint that the act of the applicants herein / defendants before the trial Court, by threatening plaintiffs to demolish suit property is illegal, arbitrary and high handed. According to the plaintiffs despite issuing notice on 29th December 2020, the officers of the Municipal Corporation have denied them hearing and are all set to demolish the structures, in terms of the oral communicated dated 5th January, 2021, by which the officers have allegedly threatened the plaintiffs to demolish the suit property.

6. Thus, the plaint as is filed, discloses the cause of action stating therein that the authorities of the Municipal Corporation are abusing their powers and, therefore, bar under section 433A will not be attracted in terms of the law laid down by this Court. The learned Judge of the Court below has thus rightly rejected the Application.

7. No illegality or perversity is found in the impugned order. There is no substance in the Revision. The same is rejected.

[ANIL L. PANSARE, J.]