



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12904 OF 2024

MAHENDRAPRASAD ACHEHELAL GUPTA,
Aged: 46 years, Occ: Business.
Residing at: Room No. B-303, 3rd
floor, Savera Appartmernt, Ganesh
Society, Kalyan Road, Nagaon,
Bhiwandi,
Dist-Thane.

...PETITIONER

~ VERSUS ~

1. BHIWANDI NIZAMPUR CITY MUNICIPAL
CORPORATION,
Bhiwandi Dist: Thane
2. ASSISTANT MUNICIPAL COMMISSIONER,
Ward Committee No. 2,
Bhiwandi Nizampur City Municipal
Corporation,
Bhiwandi, Dist.: Thane

...RESPONDENTS

APPEARANCES

FOR THE PETITIONER

Mr Devendra Shukla.

FOR RESPONDENT-
CORPORATION

Mr N R Bubna.

CORAM : M.S.Sonak &
Kamal Khata, JJ.

DATED : 19 September 2024

ORAL JUDGMENT (Per MS Sonak J):-

1. Heard Mr Devendra Shukla, learned counsel for the Petitioner and Mr N. R. Bubna, learned counsel for the Bhiwandi Nizampur City Municipal Corporation (“Corporation”).
2. Rule. The rule is made returnable immediately at the request of and with the consent of learned counsel for the parties.
3. This petition challenges the order dated 29 August 2024 directing the demolition of the entire building in which the Petitioner has his apartment on the third floor.
4. Mr Shukla submitted that no notice was served upon the Petitioner before the impugned order was made. Further, he submitted that on 5 March 2011, the Corporation had permitted construction up to the third floor. Therefore, he submitted that the impugned order, to the extent it directs demolition of the entire building and not just the unauthorised portion beyond the third floor, warrants interference.
5. We adjourned this matter to enable Mr Bubna, learned counsel for the Corporation, to state whether any notice was served upon the Petitioner. Mr Bubna, on instructions, states that no personal notice was served to him, but the notice was pasted on the structure.
6. The Petitioner had earlier instituted Writ Petition No.11472 of 2017 in this Court, impugning the Corporation’s action for demolition without issue of notice. This Petition was

disposed of by order dated 16 November 2017. This order directed the Corporation to take steps in accordance with law and not demolish part of the building in which the Petitioner was residing without granting the Petitioner an opportunity to show cause.

7. Given the above order, the Corporation should have given the Petitioner a show cause notice and allowed him some reasonable time to explain why the construction, at least up to the third-floor level, was legal and authorised. This is especially true because of the permission dated 5 March 2011 on pages 42 and 43 of this paper book.

8. Mr Bubna did attempt to explain how the permission dated 5 March 2011 was never acted upon and, further, how the building was not constructed in accordance with such permission. However, we do not propose going into those issues at this stage. We set aside the impugned order to the extent the impugned order seeks to demolish the construction up to the third-floor level. The impugned order is not set aside as it concerns the floors above the third floor, and the Corporation is free to take steps to execute the impugned order to that extent.

9. Mr Bubna states that within 15 days from today, a show cause notice would be issued to the Petitioner and other residents up to the third floor. Every attempt would be made to personally serve the notices to the occupants. However, if the houses are locked and the occupants are unavailable, such notices would be pasted on the door of the apartments in which such occupants reside. Proper documentation about such pasting of notices, i.e. photographs, etc., would be

maintained. The notices will give the occupants 15 days to respond. After considering the responses, within four weeks, the show cause notices would be disposed of by following the law.

10. If any adverse order is made, it should be communicated to the occupants up to the third floor and should not be acted upon for two weeks from the date of such communication. If the occupants are unavailable or avoid service, pasting such notice on the apartment door would constitute sufficient compliance. However, proper documentation must be maintained. The Petitioner and other occupants would then be at liberty to challenge such order by following the law.

11. This Writ Petition is disposed of in the above terms without any order for costs. All concerned to act on an authenticated copy of this order.

12. The Corporation must file a compliance affidavit and photographs by 29 November 2024. List this matter to consider the compliance report on 3 December 2024.

(Kamal Khata, J)

(M. S. Sonak, J)