

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.13770 OF 2024**

Jaysingh Revaji Patil
Age: 70 years, Occ: Business,
Having address at Hotel Pritam,
Mosam Bridge, Old Mumbai Agra Road,
Sangmeshwar, Malegaon,
District: Nashik

... Petitioner.

V/s.

1. The Municipal Corporation,
Malegaon through its
Commissioner.
2. Kamlakar Shankar Pawar
Age : 57 years, Occ: Builder/
Developer
R/o. Gagangiri Complex,
Ekatmata Chowk, Camp Road,
Tal. Malegaon,
Dist. Nashik.
3. Deputy Commissioner and Town
Planning Development Officer,
Malegaon Municipal Corporation,
Malegaon, District: Nashik.
4. Sambhaji Fula Ahire
Age: 48 years, Occ: Agriculturist,
Jay Matadi Automobile, Mosam
Pool, Old Agra road,
Sangmeshwar, Tal. Malegaon,
District : Nashik

...Respondents.

Mr. Alankar Kirpekar a/w. Adv. Ayush Tiwari, Adv. Sanjay Shinde for the
Petitioner.

Mr. A.A. Alaspurkar, AGP, for the Respondent-State.

Mr. Shrinivas S. Patwardhan a/w. Adv. Akshay Hardas for the Corporation.

CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.
RESERVED ON : 13th January, 2025.
PRONOUNCED ON : 21st January, 2025.

JUDGMENT (Per Kamal Khata, J.):

1) The short question that arises for our consideration in this Writ Petition filed under Article 226 and 227 of the Constitution of India is that: “Whether a tenant of a structure can challenge the issuance of notice by the Corporation under Section 52 and 53 of the Maharashtra Regional Town Planning Act, 1966 (“MRTP Act”).

2) The Petitioner seeks the following prayers.

- “a. That Rule be issued and record be called for;*
- b. That on perusal of the same and on further hearing to the Petitioner, this Hon’ble High Court be kindly pleased to issue appropriate writ or order thereby quashing and setting aside the impugned notice dated 23/10/2020 issued by the Respondent No.1 Corporation in respect of the subject matter property which is in possession and occupation of the Petitioner;*
- c. That the appropriate enquiry be kindly directed into the conduct of the then Dy. Commissioner of the Respondent No.1 who got the notice dated 23/10/2020 issued to the Petitioner at the instance of*

the Respondent No.1 and 3 despite there is a valid permission in favour of the Petitioner in respect of the structure occupied by the Petitioner and after receipt of the report thereof the appropriate legal action be kindly taken against the said officer of the Respondent No.1;”

3) Mr. Kirpekar, learned counsel appearing on behalf of the Petitioner argued that the Petitioner is a tenant of a structure known as Hotel Pritam admeasuring 42 x 46 sq. feet on plot number 96A, situated at Sangmeshwar Mosampool Malegaon, sub Division, Malegaon, Taluka Malegaon, District Nashik. He asserts that he has been a tenant of the subject property.

3.1) In support of his assertion, he relies upon the rent agreement dated 1st August, 1983 Foods and Safety license dated 15th December, 2016 issued under the Food Safety and Standard Act, 2006 and electricity bills. He argued that the structure was a valid structure, constructed pursuant to the permission granted by the Malegaon Municipal Corporation by its Order dated 28th July, 1980. He also relied upon the approved plan attached to the Petition at page 19. He submitted that the notice issued by the Respondent Corporation dated 23rd October 2020 was issued as per the Order passed in Writ Petition No.3544 of 2018 as well as Order passed in Contempt Petition bearing Stamp No.93965 of 2020. This was at the instance of the landlord who desired to evict him and therefore the same were not issued in good faith and therefore malafide and arbitrary.

3.2) He submitted that the Petitioner's reply dated 7th November, 2020 to notice dated 23rd October, 2020 has till date not been considered. He asserts that the Petitioner cannot be evicted save and except by due process of law as per the Order dated 25th March, 2014 passed by Civil Judge, Junior Division, Malegaon in R.C.S. No.86 of 2014

Reasons and conclusions:

4) We heard Mr. Kirpekar and perused the documents. We are unable to accept the contentions of Mr. Kirpekar for the following reasons:

(i) a tenant of a structure cannot challenge the notice under Section 52 and 53 of the MRTP Act, only the landlord can challenge the same.

(ii) The Petitioner's right if any is only against his landlord.

(iii) The tenant's rights are protected by the Statute.

5) We are supported by the Judgment of our coordinate Bench in the case of *Anandrao G. Pawar V/s. Municipal Corporation of Greater Mumbai and Others reported in 2023 SCC OnLine Bom 2534* that reiterated the decision of the Supreme Court in the case of *Shaha Ratansi Khimji and Sons V/s. Kumbhar Sons Hotel Private Limited and Others reported in (2014) 14 SCC page 1*, which held that, the fact that tenanted building is brought down does not mean that a tenancy is extinguished or comes to an end.

6) The Petitioner has a remedy against the landlord and his rights stand protected. Therefore, the Petitioner will be entitled to establish his

tenancy rights in the jurisdictional Civil Court and if succeeds, then will be entitled to such premises as he occupied or would be entitled to reconstruct the premises as was occupied previously on the landlords land, if the landlord fails to reconstruct the premises within the stipulated time under the statute as held in *Anandrao G. Pawar (supra)*.

7) In any event, we are unable to determine and protect the rights of a tenant qua the subject property in the writ jurisdiction.

8) In view of the above, we dismiss the Petition with no order as to costs.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)