

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5504 OF 2025

WITH

INTERIM APPLICATION NO. 7707 OF 2025

Mahavir Infra Housing LLP HR Its ... Petitioner
Partner

V/s.

State of Maharashtra through the ... Respondents
Collector Thane and Anr.

Mr. Sandeep Mishra, for the Petitioner.

Ms. Sulbha Chipade, AGP, for the State.

CORAM : N.J. JAMADAR, J.

DATE : 29TH APRIL 2025.

PC:

1. Heard learned counsel for the petitioner.
2. The challenge in this petition is to an order dated 15th April 2025, whereby the learned Civil Judge declined to dispense with notice under Section 80(2) of the Code of Civil Procedure.
3. The petitioner/plaintiff had instituted a suit challenging the legality and validity of the notice issued by the Tahsildar dated 6th April 2025, purportedly directing the plaintiff to stop the construction of the retention wall and excavation of soil, lest action under section 48(7) of the Maharashtra Land Revenue Code and sections 52, 53 and 54 of the

Maharashtra Regional Town Planning Act, 1966, will be initiated against the plaintiff.

4. The learned Civil Judge was of the view that the relief claimed by the petitioner in the suit could not have been granted as the petitioner had the remedies against the said notice before the authorities under Maharashtra Land Revenue Code.

5. Learned counsel for the petitioner invites attention of the Court to an order dated 21st April 2025 passed by the Circle Officer, At-Sarmal, Taluka-Shahapur, District Thane, whereby the plaintiff has been directed to demolish the construction and remove the development, lest the same would be removed by the authorities of the State on 28th April 2025.

6. Evidently, a prima facie case for dispensation of the notice under section 80(2) of the Code of Civil Procedure has been made out, as the authorities of the State have threatened the plaintiff with action of demolition of the development carried out by the plaintiff. Learned Civil Judge thus would not have rejected the application for dispensing with notice under section 80(2) of the Code. The aspect of jurisdiction could have been examined by the Trial Court after the notice under section 80(2) is dispensed with and the application of interim relief is considered by the Trial Court.

7. I am, therefore, inclined to set aside the order dated 15th April 2025. The application to dispense with the notice under Section 80(2) stands remitted back to the Trial Court.

8. The Trial Court is requested to decide the said application afresh

after providing an opportunity of hearing to the parties.

9. Let the Trial Court hear the applicant and pass an appropriate order on the said application on Monday, 5th May 2025.

(N.J. JAMADAR, J)