



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

WRIT PETITION NO.1808 OF 2018

PETITIONER : Sharad S/o Nathmal Gandhi,
Aged 66 years, Occupation – Advocate, C/o.
Gandhi S.T.D. Center M.N.P. Chowk, R/o
Gandhi Road, Akola, Tq. and Distt. Akola.
(Ori. Applicant)

..VERSUS..

RESPONDENT : Akola Municipal Corporation, through
its Commissioner, Gandhi Road, Akola,
Tq. and Distt. Akola.

Mr V. A. Lohia, Advocate for Petitioner.

CORAM : SIDDHESHWAR SUNDARRAO THOMBRE

DATE : 19th NOVEMBER, 2025.

ORAL JUDGMENT

. Heard.

2. **Rule.** Rule made returnable forthwith. Heard
Mr. V. A. Lohia, learned counsel appearing for the petitioner at
the stage of admission.

3. By this petition, the petitioner challenges the final
order dated 26.05.2006 passed by the Commissioner, Municipal
Corporation, Akola, under Section 81(B)(1) of the Maharashtra
Municipal Corporation Act, 1949 (for short, “the MMC Act”).

4. Mr. V. A. Lohia, learned counsel for the petitioner, submits that the learned Municipal Commissioner issued a notice to the petitioner under Section 81(B) of the MMC Act, and after receipt of the notice, a detailed reply along with documents was filed. However, thereafter, no communication was received and straightaway, a final order was passed on 26.05.2006. The said order was challenged by the petitioner by filing Regular Civil Appeal No. 87 of 2006 before the learned District Judge – 3, Akola, wherein a specific ground was raised stating that the procedure prescribed under Section 81(B)(2) of the MMC Act was not followed. He invited my attention to the specific ground Nos.b and c of the appeal. He submit that though a specific ground was raised, the learned Appellate Court did not deal with those grounds. Therefore, he prays that the show cause notice and the order passed by the Appellate Authority is liable to be set aside.

5. In spite of service to the respondent, nobody appeared on his behalf.

6. Since this petition is pending since 2018 and the interim relief was granted by this Court on 27.03.2018, I see no other option but to decide the matter on its own merits.

7. I have gone through the contents of the show cause notice and the reply submitted thereto. It is specifically averred by the petitioner that after receipt of the show cause notice, the petitioner was not given any opportunity of hearing. Once the show cause notice was received, it was expected that the respondent would follow the procedure as contemplated under Section 81(B) of the MMC Act. However, while passing the final order, the respondent did not record any finding; it was only observed that the reply was considered but found unsatisfactory. Without considering the required aspects, the final order was passed. Unfortunately, though this specific ground was raised before the Appellate Court, it was not addressed.

8. To consider this issue, it is useful to refer Section 81(B)(2) of the MMC Act, which is reproduced as under :

“81-B. Power to evict persons from Corporation premises.

1.

2. Before an order under sub-section (1) is made against any person, the Commissioner shall issue, in the manner hereinafter provided, a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

The notice shall,-

(a) specify the grounds on which the order of eviction is proposed to be made, and

(b) require all persons concerned, that is to say, all persons who are or may be in occupation of, or claim interest in, the Corporation premises, to show cause against the proposed order, on or before such date as is specified in the notice.

If such person makes an application to the Commissioner for the extension of the period specified in the notice, the Commissioner may grant the same on such terms as to payment and recovery of the amount claimed in the notice, as he deems fit.

Any written statement put in by any person and documents produced, in pursuance of the notice, shall be filed with the record of the case, and such person shall be entitled to appear before the Commissioner by advocate, attorney or other legal practitioner.

The notice to be served under this sub-section shall be served in the manner provided for the service of a notice under sub-section (1); and thereupon, the notice shall be deemed to have been duly given to all persons concerned.

(3) If any person refuses or fails to comply with an order made under sub-section (1), the Commissioner may evict that person and any other person who obstructs him and take possession of the premises; and may for that purpose use such force as may be necessary.

(4) The Commissioner may, after giving fourteen clear days' notice to the person from whom possession, of the Corporation premises has been taken under sub-section (3) and after publishing such notice in the Official Gazette and in at least one newspaper circulating in the locality, remove or cause to be removed, or dispose of by public auction any property remaining on such premises. Such notice shall be served in the manner provided for the service of a notice under sub-section (1).

(5) Where the property is sold under sub-section (4), the sale proceeds shall, after deducting the expenses of sale, be paid to such person or persons as may appear to the Commissioner to be entitled to the same:

Provided that, where the Commissioner is unable to decide as to the person or persons to whom the balance of the amount is payable or as to the apportionment of the same, he shall refer

such dispute to a Civil Court of competent jurisdiction, and the decision of the Court thereon shall be final.

(6) If a person, who has been ordered to vacate any premises under sub-clause (i) to (iv) of clause (a) of sub-section (1), within one month of the date of service of the notice, or such longer time as the Commissioner may allow, pays to the Commissioner the rent and taxes in arrears, or as the case may be, carries out or otherwise complies with the terms contravened by him to the satisfaction of the Commissioner, the Commissioner shall on such terms, if any (including the payment of any sum by way of damages or compensation for the contravention aforesaid), in lieu of evicting such person under sub-section (3) cancel his order made under sub-section (1); and thereupon such person shall continue to hold the premises on the same terms on which he held them immediately before such notice was served on him.”

9. On perusal of the above referred Section 81(B)(2), it appears that it is incumbent upon the Commissioner to give an opportunity of hearing to the person who has submitted a written statement or submission, permitting them to appear through a legal practitioner.

10. However, in the present case, after the receipt of notice, while passing the final order, the respondent – Authority did not follow the required provisions. Therefore, the order passed by the respondent cannot be sustained in the eyes of law. Consequently, when the specific issue was raised before the Appellate Court, the Appellate Court also did not deal with that issue. Hence, the final order issued by the respondent and the

consequential order passed by the learned District Court in Regular Civil Appeal No. 87 of 2006 are liable to be quashed and set aside. Hence, I proceed to pass the following order :

ORDER

- A) Writ Petition No.1808 of 2018 is **allowed**.
- B) The order dated 26.05.2006 passed by the respondent – Commissioner, Municipal Corporation, Akola, and the order dated 31.01.2018 passed by the learned District Judge – 3, Akola, in Regular Civil Appeal No.87 of 2006, are hereby quashed and set aside.
- C) It is made clear that the respondent Authority is at liberty to issue a fresh notice to the petitioner. It is expected that the respondent – Commissioner, Municipal Corporation Akola to follow the prescribed procedure under Section 81(B)(2) of the MMC Act and pass an appropriate order in accordance with law.

11. Rule is made absolute in the above said terms.

(SIDDHESHWAR S. THOMBRE, J.)