



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

Writ Petition No.7385/2024

Rameshwar Krushnasa Banubakode and another Vs. Municipal Corporation, Akola,
Thr.Commissioner and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. H.R.Gadhia, Advocate with Mr. Aniket Sawal, Advocate for petitioners
Mr.J.B. Kasat, Advocate for respondent nos.1 and 2.

CORAM : SIDDHESHWAR S. THOMBRE, J.

DATE : 10/10/2025.

1. Heard Mr. H.R.Gadhia, learned counsel for the petitioners and Mr. J.B.Kasat, learned counsel for respondent nos.1 and 2.

2. The petition is directed against the order dated 12.4.2024 passed by learned 4th Join Civil Judge, Junior Division, Akola in Regular Civil Suit No.554/2023, wherein the present petitioners filed a suit for declaration and permanent injunction. During the pendency of suit, an application under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure came to be rejected.

3. The petitioners' main contention before the Trial Court was that the Corporation vide its order dated 27.03.2023 granted permission to construct a temporary shed for a period of six months. Before the expiry of said period of six months, the petitioners submitted an application to the Municipal Corporation for extension of period for continuance of the Tin Shed on the property. However, no extension was granted by the Corporation and thereafter on 29.09.2023, the petitioner submitted Plan to construct new building.

4. The respondent-Corporation thereafter issued a notice dated 26.10.2023 under Section 260 and 267 of the Maharashtra Municipal Corporation Act ("The Act" for short) directing the petitioners to remove unauthorised construction. After receipt of the said notice, the petitioners replied the same, however, no decision was taken by the Corporation on their application for extension of time. Instead another notice dated 24.11.2023 was issued asking the petitioners to remove unauthorised construction. Considering the extreme urgency in the matter, the petitioners approached the Civil Court and filed Regular Civil Suit No. 554/2023 for grant of perpetual injunction on the ground that the notices issued by the Corporation were illegal.

5. The learned Trial Court, after hearing the learned counsels for the petitioners and the respondents, rejected the application below Exhibit 5. The petitioners filed Misc. Civil Appeal No.38/2024 before the learned District Judge-3, Akola which was also dismissed vide its order dated 21.11.2024. Hence, the present writ petition.

6. Mr. Gadhiya, learned counsel for the petitioners, would submit that admittedly, no objection certificate was granted by the Corporation vide its order dated 27.3.2023. But before expiry of the said period, the petitioner filed an application for extension, but the same was not granted. Subsequently when the petitioners submitted a Plan for new construction, the Corporation neither granted permission nor refused it. After completion of six months, the respondent-Corporation issued notice under Section 260 and 267 of the Act asking the petitioners to remove unauthorised construction within a period of seven days immediately after date of receipt of notice. The petitioners replied to the said notice and pointed out that they

had submitted an application for extension of time and for permission to construct new structure. But, no any order was passed on those applications. He contended that the Municipal Authority ought to have considered reply and passed an order but instead of passing an order, another notice was issued which was illegal. He would further submit that after receipt of the reply by the petitioners, the Corporation ought to have recorded the reasons as to why the reply of the petitioners has not been considered or why no decision was taken on the reply to the notice given by the petitioners. He further submitted that the learned Trial Court as well as Appellate Court ought to have granted temporary injunction and, therefore, prayed for setting aside both orders.

7. Per contra, learned counsel for the Corporation submitted that the action which was taken by the Corporation is in accordance with law. The order dated 27.3.2023 itself is clear and the time of six months is mentioned, and therefore, after expiry of said period the construction was declared unauthorised. Thereafter, the notice was issued against the petitioners to remove unauthorised construction within seven days from the date of receipt of notice. He would further submit that the order dated 27th March, 2023 itself specified the period of six months and the Corporation never extended it. He further submitted that the Corporation has rightly issued notice to the petitioners to remove unauthorised construction and therefore, supported the order passed by both the Courts below.

8. I have perused the record along with documents placed on record and also have gone through the order dated 27.03.2023, it is clear that the order dated 27.3.2023 is very specific and clear in its terms that the Corporation gave no

objection to construct tin shed for a period of six months. After completion of six months, the Corporation issued notices for removal without further extending period which was already expired. There is no fault on the part of the Corporation in issuing notices to the petitioners.

9. The learned counsel for petitioners vehemently argued that the action taken by the Corporation is improper and no order was passed on his application for the extension of time and application for the permission of new construction. In support of the contentions, he relied upon the judgments in *Sopan Maruti Thopte and another Vs. Pune Municipal Corporation and another reported in (1996) Mah.L.J.963* and *Municipal Corporation of Greater Mumbai and others Vs. Sunbeam High Tech Developers Private Limited (2019)20 Supreme Court Cases 781*.

10. In the case of *Sopan Maruti Thopte (supra)* it was held that if notices are issued either under Section 351 and/or Section 260 of the Mumbai Municipal Corporation Act, 1888, it is mandatory on the part of the Corporation to consider the reply, pass a reasoned order on it and then take appropriate action. There is no dispute about the proposition of law laid down in the above cases.

11. As far as issue in the present petition is concerned, the order issued by Municipal Corporation dated 27.03.2023 is very specific and clear and once period of six months was over, the petitioners had no right to say that their unauthorised construction be continued or the petitioners be protected. After completion of six months, the notices were issued, and therefore, reliance placed by the petitioners on the the law laid down by this Court as well as the Apex Court in the aforesaid cases is not applicable to the present case.

12. In the present petition, the Corporation issued notices to the petitioners under Sections 260 and 267 of the Maharashtra Municipal Corporation Act for removal of unauthorised and illegal construction. In this case no objection certificate dated 27.3.2023 is itself very specific and, the petitioners were expected to remove the construction of tin shed when the Corporation did not extend the time. Therefore, naturally after period of six months, the construction became unauthorised one and therefore, the learned Trial Court as well as the Appellate court had not committed any error therefore, no case is made out to interfere with orders passed by both the Courts under Article 227 of the Constitution of India. Hence, the writ petition is dismissed.

13. At this stage, learned counsel for the petitioners, seeks continuation of interim for a period of three weeks. Interim order to continue for a period of three weeks. It is made clear that after completion of three weeks, interim order stands vacated automatically.

(Siddheshwar S. Thombre, J)