

*R CS No. 23/2022
Lakhanlal -Vs- Chief Officer, N.P.
Bhiwapur*

ORDER BELOW EXH.7
(Dt. 13.04.2022)

The plaintiff has filed the present application for seeking the permission to waive the statutory notice under Section 304 of Maharashtra Municipal Council, Nagar Panchyat and Industrial Township Act, 1965(hereinafter referred as ' Act')

Perused the application. Heard the learned counsel for the plaintiff. It has stated that the plaintiff has filed the suit against the Chief Officer of N.P.Bhiwapur for the seeking the relief of declaration and permanent injunction. Therefore, as per the provision of Section 304 of Act, the notice which is required to be served upon the chief officer of N.P. Bhiwapur may be allowed to waive to file the suit. I have gone through the provision of Section 304 of the Act. Upon perusal of the provision under Section 304(1)(b) of the Act, it appears that to file the suit against the present defendant, the one month prior notice before filing the suit is required to be served. However, sub-section 4 of Section 304 of the Act speaks that when the suit is filed under Section 38 of Specific Relief Act, the notice does not required to be served upon the defendant. Further, the Hon'ble Bombay High Court in Municipal Counsel **Katol--vs-- Smt. Kamladevi W/do Yogeshwar----- decided on 15-04-2016**, it has held that when the suit is filed for the perpetual injunction as contemplated by Section 38 of Specific Relief Act, the provision of

Section 304(4) of the Act dispense with requirement of notice under Section 304(1) of the Act. In view of the said provision and as per the observation of the Hon'ble Bombay High Court in above cited judgment, the present suit is filed for seeking the perpetual injunction alongwith declaration and therefore, there does not required to serve notice upon the defendant. In view of this the question waiving the notice does not arrive. In view of the above discussion and the legal provision the plaintiff is at liberty to file the suit against the defendant without serving the notice. Therefore, this application is filed.

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(T. S. Wakdikar)
Civil Judge Jr. Dn.
Bhiwapur

ORDER BELOW EXH.5
(Dt. 13.04.2022)

The plaintiff has prayed to grant the ad-interim temporary injunction against the defendant i.e Chief Officer Nagar Panchyat, Bhiwapur.

2] Heard the learned counsel for plaintiff at length.

3] Perused the present application and the documents filed on record. The plaintiff has filed the suit for declaration and permanent injunction against the defendant i.e the Chief Officer N.P. Bhiwapur. It has contended that the property bearing No. 1643, is situated at Bhiwapur in the peaceful possession of the plaintiff. It has further contended that the plaintiff is carrying his shop on the said property and his livelihood depends upon the income of the business carried out in the shop situated on the aforesaid property. However, the defendant illegally sent the notice to him to remove his construction over the aforesaid property. It has further stated that the defendant by sending the notice is trying to remove the construction over the aforesaid property and therefore, the defendant may be directed not to remove his construction over the aforesaid property.

4] Upon perusal of the contention of the present application, it appears that the plaintiff has not denied that the aforesaid property

is belonging to the government. Further from the record, it appears that the defendant N.P Bhiwapur has sent the notice as per the provision of the Maharashtra Municipal Council, N.P. and Industrial Township Act 1965, for removing the construction from the aforesaid property which the plaintiff himself is admitting that it is the government land. The defendant is the local government body acting on behalf of state government. The notice sent to the plaintiff appears to be as per the provision of the N.P. Act 1965. Therefore, considering the above fact and circumstance, it is necessary to give the hearing opportunity to the defendant before passing any order against him. Hence, I am not inclined to allow the ad-interim injunction against the defendant. Hence, the following order.

ORDER

- 1] The ad-interim temporary injunction is rejected.
- ii] Issue notice to the defendant i.e Chief Officer N.P. Bhiwapur as to why the temporary injunction should not be granted to the plaintiff.
- iii] EP & SB is allowed if prayed.

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Dt. 13.04.2022

(T. S. Wakdikar)
Civil Judge Jr. Dn.
Bhiwapur

