

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2648 OF 2023

Yogesh Martan Mandhare

.... Petitioner

versus

Pune Municipal Corporation & Ors.

.... Respondents

.....

- Mr. Drupad Patil a/w Mr. Dheeraj Patil, Advocate for Petitioner.

CORAM : SARANG V. KOTWAL, J.

DATE : 06th MARCH, 2023

P.C. :

1. The Petitioner claims to be the owner of the authorized structure, which is the subject matter of the two notices issued by the Respondent No.1 Pune Municipal Corporation. According to the Respondent No.1, the structure is unauthorized and the Petitioner is called upon to remove the unauthorized structure. The Petitioner has filed a suit vide Regular Civil Suit No.1151 of 2019 before the Civil Judge, Junior Division, Pune, praying for declaration that the notices issued by the Respondent No.2 are illegal.

2. The Petitioner had preferred an application for interim protection vide Ex.5 in the said suit. That application was rejected. It was challenged by the Petitioner vide Misc. Civil Appeal No.344 of 2022 before the learned District Judge, at Pune. Even that Appeal was dismissed. The Trial Court had observed that the Petitioner had availed of efficacious remedy provided under MRTP Act. The learned Trial Judge further observed that the construction over the property was not with the permission of the competent authority and therefore no irreparable loss would be caused to the Petitioner if the application is rejected. The Appellate Court accepted these reasoning and dismissed the Appeal.

3. Heard Mr. Drupad Patil learned counsel for the Petitioner.

4. Learned counsel for the Petitioner relied on the document annexed as Ex.A to this Petition. He submitted that

the same document is also annexed to the plaint. In the said document dated 09/12/1938 the Chief Officer of Pune City Municipal Council had mentioned that the construction was completed as per the permission and the Petitioner's grandfather was directed to obtain the completion certificate. Learned counsel for the Petitioner therefore submitted that this document itself shows that the construction was completed as per the permission. He also invited my attention to the notice dated 02/04/2019 and the notice dated 03/06/2019 which are the subject matter of the suit. In the notice dated 03/06/2019 it was mentioned that the Petitioner's explanation was rejected based on the reasons mentioned in that notice. However, the notice itself does not mention any reasons.

5. Considering these submissions, it is necessary to issue notice to the Respondents. Based on the submissions of learned counsel for the Petitioner, he has made out a case for grant of ad-interim relief till the next date.

6. Hence, the following order :

ORDER

- (i) Issue notice to the Respondents returnable on 20/06/2023.
- (ii) Till then, there shall be ad-interim relief in terms of prayer clause (c).

(SARANG V. KOTWAL, J.)