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## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CIVIL APPELLATE JURISDICTION

## WRIT PETITION NO.13254 OF 2022

Vivek Krushna Dode

Age: 45 years, Occupation:

Having address at Mosampul

Old Agra Road, Sangameshwar

Malegaon, District: Nashik

... Petitioner.

V/s.

1. The State of Maharashtra.
2. Malegaon Municipal Corporation  
Malegaon, Taluka Malegaon,  
District: Nashik.
3. Deputy Commissioner and Town  
Planning Development Officer,  
Malegaon Municipal Corporation,  
Malegaon, District: Nashik.
4. Kamlakar Shankar Pawar  
Age: Major, Occ: Builder /  
Developer, having address at  
Gagangiri Complex, Camp Road,  
Taluka Malegaon, Dist: Nashik

...Respondents.

Mr. Alankar Kirpekar a/w. Adv. Ayush Tiwari, Adv. Sanjay Shinde for the  
Petitioner.

Mr. A.A. Alaspurkar, AGP, for the Respondent-State.

Mr. Shrinivas S. Patwardhan a/w. Adv. Akshay Hardas for the Corporation.

CORAM : A. S. GADKARI AND  
KAMAL KHATA, JJ.

RESERVED ON : 13<sup>th</sup> January, 2025.

PRONOUNCED ON : 21<sup>st</sup> January, 2025.

**JUDGMENT (Per Kamal Khata, J.):**

- 1) The short question that arises for our consideration in this Writ Petition filed under Article 226 and 227 of the Constitution of India is that: “Whether a tenant of a structure can challenge the issuance of notice by the Corporation under Section 52 and 53 of the Maharashtra Regional Town Planning Act, 1966 (“MRTP Act”)”.
- 2) The Petitioner seeks the following prayers.

*“a. That Rule be issued and record be called for:*

*b. That on perusal of the same and on further hearing to the Petitioner, this Hon’ble High Court be kindly pleased to quash and set aside the impugned notices dated 23/10/2020 and 24.02.2022 issued by the Respondent No. 2 Corporation to the Petitioner u/s. 52 and 53 of the Maharashtra Regional Town Planning Act, 1966;*

*c. That this Hon’ble Court be kindly pleased to issue appropriate writ in the nature of writ of prohibition thereby restraining the Respondent No. 2 Corporation from taking any action as against structure of the Petitioner standing on the subject matter property pending the hearing and*

*final disposal of the present Writ Petition.”*

3) Mr. Kirpekar, learned counsel appearing on behalf of the Petitioner argued that the Petitioner is a tenant of a tin shed admeasuring 5.50 x 4.00 square meters on plot number 96, situated at Malegaon, sub Division, Malegaon, Taluka Malegaon, District Nashik. He asserts that he has been a tenant of the subject property since several decades.

3.1) In support of his assertion, he relies upon the shop license dated 16<sup>th</sup> September 2017 issued under the Maharashtra Shops and Establishment Act 1948, electricity bills and rent receipts. He argued that the structure was a valid structure, constructed pursuant to the permission granted by the Malegaon Municipal Corporation by its Order dated 18th March 1981. He also relied upon the approved plan attached to the Petition at page 19. He submitted that the notice issued by the Respondent Corporation dated 23<sup>rd</sup> October 2020 was issued at the instance of the landlord who desired to evict him and therefore the same were not issued in good faith and therefore malafide and arbitrary.

3.2) He submitted that without hearing the Petitioner or considering the reply of the Petitioner dated 22<sup>nd</sup> March 2021, the Respondent Corporation had issued two other notices dated 1<sup>st</sup> March 2021 and 24th February 2022.

4) Mr. Patwardhan, learned counsel for the Respondent Corporation relied on the Affidavit of Mr. Shantaram Thukan Chaure dated 20th August

2024 to contend that the Petitioner was given a hearing pursuant to the notice dated 1st March 2021. The Petitioner, however, could not justify his claim about the authorized structure that he occupied. He argued that the building permission dated 15th March 1981 was in respect of a structure on survey number 238/3 which was renumbered as Final Flat No.98 in Town Planning Scheme whereas the Petitioners structure is on Final Plot No.96. Thus, the notice issued under Section 52 and 53 of the MRTP Act was rightly issued. The Petitioner in fact could not produce any documents to substantiate his claim regarding the structure. He submitted that the Petition be dismissed.

**Reasons and conclusions:**

5) We heard both counsel and perused the documents. We are unable to accept the contentions of Mr. Kirpekar for the following reasons:

(i) a tenant of a structure cannot challenge the notice under Section 52 and 53 of the MRTP Act, only the landlord can challenge the same.

(ii) The Petitioner's right if any is only against his landlord.

(iii) The tenant's rights are protected by the Statute.

6) We are supported by the Judgment of our coordinate Bench in the case of *Anandrao G. Pawar V/s. Municipal Corporation of Greater Mumbai and Others reported in 2023 SCC OnLine Bom 2534* that reiterated the decision of the Supreme Court in the case of *Shaha Ratansi Khimji and Sons*

*V/s. Kumbhar Sons Hotel Private Limited and Others reported in (2014) 14 SCC page 1*, which held that, the fact that tenanted building is brought down does not mean that a tenancy is extinguished or comes to an end.

7) The Petitioner has a remedy against the landlord and his rights stand protected. Therefore, the Petitioner will be entitled to establish his tenancy rights in the jurisdictional Civil Court and if succeeds, then will be entitled to such premises as he occupied or would be entitled to reconstruct the premises on the landlords land, if the landlord fails to reconstruct the premises within the stipulated time under the statute as held in *Anandrao G. Pawar (supra)*.

8) In any event, we are unable to determine and protect the rights of a tenant qua the subject property in the writ jurisdiction.

9) In view of the above, we dismiss the Petition with no order as to costs.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)