

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.5021 OF 2014

(Fonging s/o late Chang Shin Yen and others vs. Nagpur Municipal Corporation and another)

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

Shri S. Dewani, Advocate for petitioners.
Shri J.B. Kasat, Advocate for respondent no.1.
Shri A.S. Manohar, Advocate for respondent no.2.

CORAM : B.P. DHARMADHIKARI AND
P.N. DESHMUKH, JJ.

DATED : SEPTEMBER 9, 2015

Question to be gone into is whether in terms of Section 264 of Maharashtra Municipal Corporation Act, Designated Officer has recorded a subjective satisfaction before issuing notices for demolition of a building on the ground that it is dilapidated.

The petitioners before this Court are occupants of said building and in paragraphs 8, 9 and 10 of the petition, they allege that officials of the

Corporation have not reached any such satisfaction and action has been taken under the pressure of influential persons i.e. political leaders.

Shri Kasat, learned Counsel appearing for respondent no.1 Corporation, is ready and willing to produce original records before this Court to show that Assistant Municipal Commissioner, who is Designated Officer, has reached necessary satisfaction.

Shri Manohar, learned Counsel for respondent no.2 Trust, denies all allegations of malafides. He submits that in the year 1992, in rent control proceedings, the occupants had admitted that the building is in a dilapidated condition and in August 2013, part of very same structure fell down because it was in a ruinous condition. It is further pointed out that occupants have also filed civil suits claiming practically same reliefs.

In brief reply, Adv. Dewani submits that in suits, there cannot be any challenge to subjective satisfaction of Designated Officer.

The issue is looked into by Division Bench of this Court in its judgment in the case of

Diwanchand Gupta vs. N.M. Shah (1972 Mh.L.J. 524).

We find that on 24/9/2014, this Court directed parties to maintain status quo and thus, notices dated 2/8/2013 issued under Section 264 of the Maharashtra Municipal Corporation Act have not been implemented fully so far. There is dispute between parties in relation to part demolition. According to petitioners, it was carried out by landlord highhandedly while according to respondent no.2, demolition operation was carried out by gang of Corporation only. However, according to respondent no.1 Corporation, said demolition was not undertaken by its gang.

In this situation, as we find that period of more than two years has expired after issuance of said notices and period of one year is to expire after this Court granted status quo, interest of justice can be met by allowing petitioners to make appropriate representation to the Designated Officer. If such representation is made within a period of two weeks from today, the Designated Officer shall consider the entire controversy in the light of material available

on record and reach necessary satisfaction as per law within next four weeks. If necessary, he shall grant opportunity of hearing to petitioners as also to respondent no.2.

With the above directions and keeping all rival contentions open, we continue interim orders already operating till today and dispose of writ petition. Needless to mention that if any fresh action is to be taken, fresh notices as per law shall be served upon the petitioners.

JUDGE

JUDGE

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