

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.**

Writ Petition No. 639 of 2016

Ravindra Gajbhiye s/o Hansdas Gajbhiye

v.

Ngp. Mpl. Corpn., Ngp. & ors.

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

Court's or Judge's orders

Coram : Smt. Vasanti A. Naik &
V.M. Deshpande, JJ.

Date : 16th March, 2016.

By this writ petition, the petitioner challenges the order of the Health Officer, Nagpur Municipal Corporation, dated 14.5.2015, rejecting the application filed by the petitioner for cancellation of the registration of the Sonography Clinic of the respondent nos. 5 and 6. The petitioner seeks a direction to the respondent-authority to close the clinic of the respondent nos. 5 and 6 in the building called "Karam-Sheel Heights".

The writ petition was argued by Shri Bajaj, the learned counsel for the petitioner on 8.3.2016 and when the counsel became aware that this Court did not find favour with the case

sought to be made out on behalf of the petitioner and was not inclined to grant the relief, the learned counsel for the petitioner, sought an adjournment of the matter till 16.3.2016 so that he could point out some judgments in support of the case. It is necessary to note that though the matter was sought to be adjourned by the learned counsel for the petitioner only with a view to cite some judgments, on 15.3.2016, Shri G.L. Bajaj Advocate informed this Court that on 14.3.2016 the petitioner has filed an application for permission to convert the writ petition in to a Public Interest Litigation.

We find that the application is not filed in accordance with the provisions of The Bombay High Court Public Interest Litigation Rules, 2010, and the same is not moved by following the procedure that is liable to be followed in terms of Rules 4 and 5 thereof. It would also be necessary to mention that the assignment of hearing the Public Interest Litigation is not before this Bench. In this background, we find that the application for treating the present writ petition as a Public Interest Litigation is filed on 14.3.2016 only with an object of ensuring that this writ petition is not decided by us. Since we were inclined to dismiss the petition by permitting the petitioner to take up appropriate remedy, including the remedy of filing a suit and proving the nuisance by

the respondent nos. 5 and 6, as claimed by the petitioner, the petitioner has filed the application for treating this petition as a Public Interest Litigation. We do not appreciate such conduct. These are tactics for avoiding a Bench. We are clearly of the view that the application is filed only with an object of Bench hunting/Bench preference.

On 15.3.2016, when we informed Shri G.L. Bajaj, the counsel for the petitioner, that we are not inclined to entertain the application at this stage and he may proceed to point out the decisions of the Hon'ble Supreme Court, for which the adjournment was sought, the counsel for the petitioner stated that he was not ready with the decisions. We, therefore, asked the counsel for the petitioner to work out the matter in the afternoon session after 2-30 p.m. but the counsel brazenly stated that it was not possible for him to work out the same after 2-30 p.m. With great reluctance, at the request of the counsel for the petitioner, we adjourned the matter for today.

Today, when the matter was called in the morning session and in the afternoon session Shri G.L. Bajaj Advocate was not present. In the aforesaid set of facts, we proceed to decide the writ petition.

We find on a reading of the writ petition and after having heard the learned counsel for the petitioner on 8.3.2016 that the petitioner has challenged the order of the Corporation, refusing to cancel the registration of the Sonography Centre run by the respondent nos. 5 and 6, mainly on two grounds. Firstly, according to the petitioner the Sonography Centre run by the respondent nos. 5 and 6 is causing nuisance to the petitioner and the other flat owners. Secondly, according to the petitioner, apart from the nuisance that is caused to the petitioner and the other residents, the opening of Sonography Centre by the respondents 5 and 6 in the premises in question is contrary to the undertaking given by the respondent nos. 5 and 6 to the Society. According to the petitioner, the Sonography Centre run by the respondent nos. 5 and 6 causes nuisance to the petitioner and hence the impugned order is liable to be set aside.

Shri Haq, the learned counsel for the respondent nos. 5 and 6 disputes that any nuisance is caused to the petitioner or to the other residents of the apartment in view of the establishment of the Sonography Centre by the respondents nos. 5 and 6. It is denied that there is any breach of undertaking by the respondent nos. 5 and 6. It is stated that in fact the petitioner and some other

flat owners had disconnected the water supply to the flats of the respondent nos. 5 and 6. It is stated that a Civil Suit was filed by the respondent nos. 5 and 6 against the petitioner and some other flat owners for a permanent injunction restraining them from disconnecting the water supply from the Bore-well and the Over-head tank and a temporary injunction was granted by the trial Court in favour of the respondent nos. 5 and 6 and against the petitioner. It is stated that the respondent nos. 5 and 6 are suffering harassment at the hands of the petitioner and some other apartment holders. The learned counsel prayed for the dismissal of the writ petition.

We find on a perusal of the documents annexed to the petition as also the impugned order that there is a serious dispute whether the Sonography Centre run by the respondents 5 and 6 causes nuisance to the petitioner and the other residents. It is observed in the impugned order that there is no prohibition against the establishment of a Sonography Centre in the residential area in view of the judgment of this High Court. We find that a similar issue like the one involved in this case was considered by the Division Bench of this Court in the case of **Vinayak Wasudeo Upadeo & anr. vs. City of Nagpur Corporation & ors.** reported in **2002(3) Mh.L.J. 210** and this Court has held that the comparative

discomfort that would be suffered by the persons like the petitioner in this case would be negligible than the one which would be suffered by the residents of the locality in which a hospital, clinic or a dispensary is established, as a large number of people would be in need of a clinic, hospital or nursing home even in the residential areas. The learned counsel for the respondent nos. 5 and 6 rightly relied upon the judgment reported in *2002(3) Mh.L.J. 210* in support of his case. Since the respondent nos. 5 and 6 have seriously disputed that any inconvenience or nuisance is caused to the petitioner and the other residents and since the Health Officer is clearly of the view, as could be seen from the impugned order dated 14.5.2015, that care has been taken by the respondent nos. 5 and 6 to ensure that no inconvenience or nuisance is caused, it would not be possible to cancel the registration of the Sonography Centre of the respondent nos. 5 and 6 in exercise of the writ jurisdiction. Though we had repeatedly asked the learned counsel for the petitioner on 8.3.2016 whether there is any statute, Rule or Regulation prohibiting the establishment of a Sonography Centre in the residential area, the counsel for the petitioner was not able to point out any such provision. We make it clear that we are not deciding the issue in respect of the alleged nuisance or inconvenience caused to the petitioner and the other residents. To prove the nuisance or inconvenience, it would be necessary for the

petitioner to file appropriate proceedings, which may include a Civil Suit. On 08.3.2016 also this Court had expressed that this Court was not inclined to entertain the writ petition and the petitioner was free to exhaust the other remedy.

In the circumstances of the case, we dismiss the writ petition with costs. The points raised in the petition are however kept open.

Judge

Judge

/TA/