

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

WRIT PETITION NO.1307/2015

Dadarao s/o Shankarrao Moon and others

...Versus...

The Collector, Wardha and another

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

Court's or Judge's orders

Shri Anand Parchure, Advocate for petitioners
Ms N.P. Mehta, AGP for respondent no.1
Shri M.I. Dhatrak, Advocate for respondent no.2

**CORAM : SMT. VASANTI A NAIK AND
MRS. SWAPNA JOSHI, JJ.**

DATE : 28.07.2016

By this petition, the petitioners have challenged the notices issued by the Municipal Council to the petitioners under Section 181 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 asking them to remove the encroachments abutting the road.

It is stated on behalf of the petitioners that though the action is sought to be taken under Section 181 of the Act, the permission of the Collector to remove the structures of the petitioners is not taken, as is required by the proviso to Sub Section 2 of Section 181 of the Act, though the property belongs to the State Government and it is leased to the Municipal Council. It is stated that the petitioners have not been granted any opportunity of making a representation and by the impugned communication, the petitioners are directed to remove the alleged encroachments, within seven days.

Shri Dhatrak, the learned Counsel for the Municipal Council states that action could be initiated by the Municipal Council under Section 180 as well as Section 181 of the Act. It is stated that though the petitioners are entitled to make a representation under Section 180 (5) of the Act, no such representation was made by the petitioners.

Since one of the grounds raised by the petitioners is that the petitioners were not granted any opportunity to explain that their structures are not projections on the road and they are not encroachments and since a provision for making a representation is made under Section 180 (5) of the Act, the ends of justice could be met by permitting the petitioners to make the representations to the Municipal Council within fifteen days. If the representations are made within fifteen days, the Municipal Council may decide the same as early as possible.

Hence, we dispose of the writ petition with permission to the petitioners to make the representations to the Municipal Council within fifteen days and with a direction to the Municipal Council to decide the representations as early as possible and take appropriate action, in accordance with law.

The impugned notices would remain stayed till the representations of the petitioners are decided by the Municipal Council.

Order accordingly. No costs.

JUDGE

JUDGE

C E R T I F I C A T E

I certify that this order uploaded is a true and correct copy of original signed order.

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