

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4581/2015

(RAVINDRA KASHINATH NARKHEDE & OTHERS **VERSUS** STATE OF MAHARASHTRA & OTHERS)

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

Court's or Judge's orders

Shri J.B. Gandhi, counsel for the petitioner.
 Shri A.A. Madiwale, A.G.P. for the R-1 & 2.
 Shri S.V. Sohoni, counsel for the R-3 & 4.
 Shri V.G. Wankhede, counsel for the R-5.

CORAM : SMT. VASANTI A NAIK AND
KUM. INDIRA JAIN, JJ.

DATE : OCTOBER 06, 2016.

By this writ petition, the petitioners seek a declaration that the action on the part of the respondent nos.3 and 4-Municipal Corporation in demolishing the shops of the petitioners without notice, on 27.06.2014 is bad in law and the petitioners are entitled to the possession of the respective sites on which the shops were located. The petitioners seek a direction against the respondents to resettle and rehabilitate the petitioners immediately, in accordance with the policy of the State Government.

According to the petitioners, the allottees of the shop blocks had transferred the shop blocks in favour of the petitioners by executing the lease agreements and though the petitioners were carrying on their business in the said shops for quite some time, the respondent-Corporation, without issuing any notice to the petitioners and without following the due procedure prescribed by law, demolished the shops of the petitioners. The petitioners seek a re-entry on the premises on which the shops were constructed and further seek a direction against the respondents to rehabilitate the petitioners in accordance with the policy of the State Government.

The learned Assistant Government Pleader appearing on behalf of the respondent nos.1 and 2 and the learned counsel for the respondent nos.3 to 5 have strongly opposed the prayers made in the writ petition. It is stated that the petitioners are neither the lessees nor the licensees of the respondent-Corporation. It is stated that the petitioners have entered into the shop premises through the lessees to whom the leases were granted by the State Government and the period of lease had expired. It is stated that the lease of the persons, from whom the petitioners had secured the possession, had expired between 2002 and 2010 and neither the original lessees nor the petitioners had any right to retain the possession of the shop blocks. It is stated that the possession of the petitioners was that of trespassers and the appropriate remedy for the petitioners to seek the aforesaid relief would be, to approach the civil Court, as several disputed questions of facts arise for determination in this writ petition. It is stated that there is no similarity in the facts involved in Writ Petition No.5130 of 2014 and the present writ petition as in the said writ petition, the petitioners were the lessees of the State Government. It is stated that since the persons, from whom the petitioners claim to have derived the possession of the shops, had ceased to be the lessees, the possession of the petitioners cannot be said to be legal. It is stated that the shops have been demolished after following the due procedure prescribed by the provisions of Section 230 of the Maharashtra Provincial Municipal Corporation Act, 1949.

It would be necessary to uphold the preliminary objection raised on behalf of the respondents to the tenability of the writ petition. Several disputed questions of facts are involved in this writ petition. The petitioners are claiming to be in lawful possession of the property, whereas, the possession as well as the nature of the possession of the petitioners is disputed. Also, though it is the case of the petitioners that the respondents have not followed the procedure prescribed by the provisions of Section 53 of the Maharashtra Land Revenue Code, 1966, it is the case of the Corporation that the procedure under the provisions of Section 230 of the Maharashtra Provincial Municipal Corporation Act, 1949 has been duly followed. In any case, the shops, in which the petitioners were carrying on the business, are demolished and in the set of facts recorded hereinabove, it would not be possible for this Court in exercise of the writ jurisdiction to grant the relief sought by the petitioners. Hence, we decline to entertain the writ petition.

The writ petition is dismissed with no order as to costs.

The petitioners are free to take up appropriate proceedings, if so advised.

The points raised in the petition are kept open.

JUDGE

JUDGE

CERTIFICATE

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

Uploaded by: Rohit D. Apte.

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