

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

WRIT PETITION NO. 5899 OF 2015

(Sau. Sharda w/o Vijaypal Ghodke vs. Union of India thr. its Secretary, Railway Board, Ministry of Railways & Ors.)

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

Court's or Judge's orders.

**CORAM : B.P. DHARMADHIKARI &
P.N. DESHMUKH, JJ.
MARCH 16, 2016.**

Heard Shri Ambatkar, learned counsel for the petitioner, Shri Lambat, learned counsel for respondent Nos. 1 & 2, Shri Kinkhede, learned counsel for respondent No. 3, Mrs. Taiwade, learned AGP for respondent No. 4 and Shri Quazi, learned counsel for respondent No. 5, for some time.

The fact that the Planning Authority for the area in which subject land is situated is Nagpur Municipal Corporation, is not in dispute. The Nagpur Municipal Corporation was not originally joined as party respondent, it has been added on 09.02.2016.

Shri Quazi, learned counsel appearing for Nagpur Municipal Corporation, invites attention to notice under Section 127(1) of the Maharashtra Regional Town Planning Act. We find that said notice is addressed to Nagpur Improvement Trust, which is respondent No. 3 in present writ petition.

Shri Kinkhede, learned counsel appears for respondent No. 3 and submits that Respondent No. 3 is not concerned in the matter.

Copy of this notice is, however, forwarded to the Municipal Corporation, Nagpur.

Shri Ambatkar, learned counsel invites attention to it and pointed out that even acknowledgement of Nagpur Municipal Corporation for having received the notice is produced on record.

Forwarding a copy of legal notice meant for Nagpur Improvement Trust to Nagpur Municipal Corporation, does not tantamount to service of notice under Section 127 of the Nagpur Municipal Corporation Act, upon NMC. The notice under section 127(1) results in a deeming fiction and, therefore, all steps envisaged therein need to be strictly adhered to.

Here, it is seen that the petitioner has not served the required notice upon added Respondent No. 5. Therefore, keeping all other contentions of Shri Ambatkar, learned counsel for the petitioner, open for consideration, we grant the petitioner leave to serve a fresh notice in accordance with law upon Respondent No. 5 – Nagpur Municipal Corporation.

With said leave and keeping all contentions open, we dispose of the present writ petition. However, there shall be no order as to costs.

JUDGE

JUDGE