

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

WRIT PETITION NO.6227 OF 2015

Kashish S/o Kasturchand Jaiswal and ors

..vs..

**State of Maharashtra, through its Secretary, Urban Development Department, Mantralaya,
Mumbai-32 and ors**

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

Court's or Judge's Order

Shri M.P. Khajanchi, counsel with Shri M.I. Dhatrak, Adv. for the
petitioners.

Shri D.M. Kakani, counsel for R-3.

Shri Akshay Naik, counsel for R-4 intervenor.

None appears for R-2.

Shri N.R. Patil, AGP for R-1.

**CORAM : B.P. DHARMADHIKARI &
KUM. INDIRA K. JAIN, JJ.**

DATED : JULY 25, 2016.

Heard learned counsel Shri M.P. Khajanchi
with Advocate Shri M.I. Dhatrak for the petitioners,
learned counsel Shri D.M. Kakani for respondent No.3,
learned counsel Shri Akshay Naik for respondent No.4
(intervenor), and learned Assistant Government Pleader
Shri N.R. Patil for respondent No.1. Nobody appears for
respondent No.2-The Chief Municipal Council, Gondia.

The impugned action dated 18.3.2015
entrusting execution of work of construction of under
ground drainage within the limits of respondent
No.2-Municipal Council, Gondia to respondent No.3-

Maharashtra Jeevan Pradhikaran is taken under Section 312A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for the, “*the said Act*”).

For the present, learned counsel Shri M.P. Khajanchi has restricted challenge only to point out violation of procedure stipulated in Section 312A of the said Act.

We have heard respective learned counsel for the parties accordingly. We find that in the impugned order itself, after taking note of the fact that there was no decision of general body of the Municipal Council, on 18.3.2014 it was called upon to look into the proposal submitted by respondent No.3 and to take necessary decision. On 26.4.2014, the Municipal Council has, vide Resolution No.15, decided to execute the work itself. However, it is the Chief Officer has on 2.5.2014 pointed out to the State Government the bad financial condition and, therefore, requested the State Government to complete the work and, thereafter, hand it over to the Municipal Council. It appears that because of this communication, the decision under Section 312A of the said Act has been taken and respondent No.3 is authorized to undertake the execution of work.

Perusal of Section 312A of the said Act reveals that before any direction thereunder, the State Government has to give an opportunity to the council to make representation within a period of fifteen days as to why such instruction or direction should not be issued. Thus, opportunity is to be given to the Municipal Council. The communication sent by its Chief Officer unsupported by any Resolution, therefore, will not meet the ingredients of proviso to Section 312A of the said Act.

In the present facts, there is a contrary Resolution of the Municipal Council on 26.4.2014. The letters sent by the Chief Officer of Municipal Council on 2.5.2014 runs counter to this Resolution. If, thereafter, the State Government still found it necessary to proceed further, the necessary show cause notice and opportunity should have been given to the Municipal Council itself. That has not been done.

In this situation, we quash and set aside impugned Government decision dated 18.3.2015. Consequently, subsequent communication dated 30.10.2015 issued by respondent No.3 to respondent No.2 is also set aside.

We permit respondent No.1 to issue fresh show cause notice to the Municipal Council Gondia in

accordance with proviso to Section 312A of the said Act and to proceed further in the matter.

With these directions and liberty, we partly allow the writ petition. No costs.

JUDGE

JUDGE

!! BRW !!

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.

Uploaded by : Bhushan R.Wankhede.
(Personal Assistant)

Uploaded on : - 27/7/2016

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