

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

CRIMINAL WRIT PETITION NO.845 OF 2019

Rajeev Yashwantrao Wanjari,
 Aged 53 years, Occ: Contractor,
 R/o Near Sai Mandir, Takiya Ward,
 Bhandara, Tah. & Dist. Bhandara. **APPLICANTS**
PETITIONER

...V E R S U S...

1. Sau. Satyasheela Baban Golpe,
 Aged about 50 years,
 Occ: Housewife, R/o Vidharbha
 Housing Block No.27 and 28,
 Takiya Ward, Bhandara,
 Tah. & Dist. Bhandara.
2. Prashant Yashwantrao Wanjari,
 Aged 50 years, Occ: Contractor,
 R/o Near Sai Mandira, Takiya Ward,
 Bhandara, Tah. & Dist. Bhandara.
3. State of Maharashtra through S.D.M.,
 Bhandara. **NON-APPLICANTS**
RESPONDENTS

 Mr. P.S. Chawhan, Advocate for Petitioner.
 Mr. Aniruddha Anantkrishnan, Advocate for Respondent 1.
 Mr. M.K. Pathan, APP for Respondent 2/State.

CORAM: **ROHIT B. DEO, J.**
DATE: **17th DECEMBER, 2020.**

ORAL JUDGMENT:

With consent the petition is finally heard at the

admission stage.

2. The petitioner purchased tenement L-28 admeasuring 30.50 sq.mtr. in Vidarbha Housing Board Colony, Bhandara vide sale-deed dated 05.10.2018. The said tenement is admittedly in possession of respondent 1.

3. Within five days of the purchase, the petitioner requested the Chief Officer, Nagar Parishad for permission to demolish the property on the premise that the property is thirty five years old and is unsafe for the residents of the neighbourhood.

4. It appears that the petitioner did succeed in obtaining the permission. Respondent 1 however, resisted the demolition impelling the petitioner to take recourse to section 133 Cr.P.C. The learned Sub-Divisional Magistrate (SDM) allowed the application and directed demolition/removal of the tenement. The order of the learned SDM was assailed in Criminal Revision 293/2019. The learned Additional Sessions Judge, Bhandara, vide order dated 16.05.2019 allowed the revision.

5. The learned counsel for the petitioner would submit that the Revisional Court clearly erred in dislodging the order of the learned SDM. I am not inclined to agree.

6. The SDM based the order on a report submitted by the Executive Engineer, Public Works Department (PWD). It is not in dispute, that the said engineer did not undertake a structural audit and the report was given on the basis of external inspection. The learned Sessions Judge, therefore, committed no error in discarding the said report.

7. The power to direct removal of building envisaged in section 133 (1)(d) Cr.PC. is drastic and the *sine qua non* is that there must be unimpeachable material on record for the authority to hold that there is an imminent threat to the lives of the persons residing in the said property or others in the vicinity. I am afraid, there was no material before the SDM to take recourse to the drastic power of removal of building.

8. No case is made out for interference in writ jurisdiction.

9. The petition is dismissed with liberty to agitate the submission that the property is dilapidated, before the appropriate forum and taking recourse to appropriate statutory provisions.

JUDGE

NSN