

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

**WRIT PETITION NO. 2512 OF 2021**

(PURUSHOTTAM SHRAWAN WANKHEDE...VS..NAGPUR MUNICIPAL CORPORATION & OTH.)

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

Shri S.G.Karmarkar, Advocate for Petitioner.  
Shri N.P.Mehta, A.G.P. for Respondent Nos.1 & 2.

**CORAM : SUNIL B. SHUKRE AND**  
**ANIL S. KILOR, JJ.**

**DATED : AUGUST 03, 2021.**

1. Heard.
2. The grievance of the petitioner is that neighbours, who are respondent Nos.4 and 5, are making illegal construction on their plot without obtaining any sanction and that the Authorities i.e. respondent Nos. 1 to 3, even after issuance of notice under Section 53(1) of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as "MRTP Act"), are not taking any action for stopping or removal of the construction so far made. This grievance has been made in this petition on the backdrop of the peculiar facts and circumstances which are well within the knowledge of the petitioner.
3. The possession of knowledge of the facts by the petitioner can be understood from the averments made in paragraph Nos. 8 and 9 and also the documents annexed to the petition.

4. In paragraph 8, the petitioner has stated that on 05/01/2019 the respondent Nos. 4 and 5 have filed an appeal under Section 47 of the MRTP Act before the Hon'ble Minister, Urban Development Department, Mantralaya, Mumbai and thereby challenged notice under Section 53(1) of the MRTP Act, dated 20<sup>th</sup> January 2018. It is further stated in this paragraph that the Hon'ble Minister has not granted any stay. The petitioner has made a statement that even otherwise, there is no merit in the said appeal. Then, in paragraph 9, the petitioner has stated that the respondent Nos. 4 and 5 have filed civil suit before Civil Judge Senior Division, Nagpur and challenged the demolition notice, dated 20<sup>th</sup> January 2018, which is the subject matter of the appeal filed under Section 47 of the MRTP Act by the respondent Nos.4 and 5. The petitioner has further stated in paragraph 9 that no interim relief has been granted by the Civil Court to the respondent Nos. 4 and 5. The petitioner has also stated that the respondent Nos.4 and 5 have filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure for grant of temporary injunction. The petitioner has annexed copies of the appeal filed under the MRTP Act, plaint filed in the civil suit bearing Regular Civil Suit No. 126 of 2019 and copy of the application vide Exh.5 filed in the civil suit.

5. On going through the aforestated documents, it is clearly seen that the notice issued under Section 53(1) of the MRTP Act is under challenge in these proceedings. One of the prayers made in the civil suit is for seeking declaration that the notice dated 20<sup>th</sup> January 2018, issued by the defendant No.1, who is respondent No.3 here, is illegal, *void-ab-initio* and not binding upon the plaintiffs i.e. respondent Nos. 4 and 5 here. Similar is the prayer made in the appeal filed under Section 47 of the MRTP Act. In the appeal filed under the MRTP Act, the respondent Nos.4 and 5 have made specific allegations against the petitioners. The allegations are to the effect that the petitioners are trying to see that the construction of the old house of respondent Nos.4 and 5 is completely removed. According to the respondent Nos. 4 and 5, they are residing in that house since last more than 60 years. In the plaint filed in the civil suit, the respondent Nos.4 and 5 have pleaded that the respondent No.3 here, who is defendant there, did not give any opportunity of hearing to them and straightway threatened the respondent Nos. 4 and 5 to remove the construction of the complete house where they have been residing since last more than 60 years.

6. Against the background of pendency of the two judicial proceedings wherein the validity of the demolition notice dated 21/01/2018 is under question, the petitioner has filed the present petition with one of the prayers that the respondent Nos.2 and 3 be directed

to implement and execute the demolition notice dated 21/01/2018 issued under Section 53(1) of the MRTP Act, forthwith.

7. Such an attempt made by the petitioner is nothing but an attempt to pre-empt the judicial proceedings and also interfere with the due process of law resorted to by the respondent Nos.4 and 5 by exercising their right under the MRTP Act also right under civil law to protect their house long standing on the subject land. Such an attempt must be denounced and we do so.

8. For the aforestated reasons, this petition cannot be entertained and it stands summarily **dismissed** with costs of Rupees One Thousand, to be deposited in the account of High Court Bar Association for the purpose of Library, within two weeks from the date of the order, failing which the same shall be recovered from the petitioner by treating them as arrears of land revenue.

(ANIL S.KILOR,J)

(SUNIL B. SHUKRE,J)