

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

WRIT PETITION NO. 3694 OF 2020

Shri Mahadeo @ Mahesh S/o Lekhumal Khushalani,
..VS..

State of Maharashtra, through its Secretary, Urban Development Department,
Mantralaya, Mumbai and Ors.,

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

Court's or Judge's orders

Ms Bhavika Hindustani, Advocate h/f Shri Harish Dangre,
Advocate for petitioner.
Shri A. S. fulzele, Addl.G.P for respondent No.1.
Shri Girish Kunte, Advocate for respondent Nos.2 to 5.
Shri A. S. Joshi, Advocate for respondent Nos.6 & 7.

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

DATED : 15.09.2021

1. Heard.
2. Ms Bhavika Hindustani, learned counsel for the petitioner seeks time to file rejoinder in the matter.
3. In view of what is stated in the Pursis dated 17.06.2021, which is supported by a report given by officials of Gandhibagh Zone No.6 who had visited the property in question and found that the property was in endangered condition, the request for grant of further time cannot be granted. It is rejected.

4. By this petition, notice dated 18.11.2020 has been questioned. The notice notes the fact that in the opinion of the Nagpur Municipal Corporation Officials, the subject property is in endangered and dilapidated condition and that it can come down to the ground at any point of time. This position is strongly disputed by the petitioner. Learned counsel for the petitioner submits that the property is in sound condition as per the opinion of the Civil Engineer consulted by the petitioner. Learned counsel for the petitioner also submits that the impugned show cause notice has been issued to by-pass the mandatory injunction granted by the Civil Court as per its judgment and order dated 02.05.2017 in Regular Civil Suit No.298 of 2015, whereby respondent Nos.6 and 7 are permanently restrained from disturbing peaceful possession of the petitioner as regards this suit property, except in accordance with law. The learned counsel for the petitioner submits that this show cause notice has been issued to overcome the permanent injunction granted to the petitioner using Nagpur Municipal Corporation as a proxy.

5. The argument, however, cannot be accepted for the reason that the permanent injunction so granted by the Civil Court is not absolute and is amenable to due process of law. The injunction is to the effect that the peaceful possession of the petitioner shall not be disturbed without following due process of law i.e. whenever it is required by the due process of law, the

possession would have to be touched upon in such a way as is necessary to achieve the ends of justice. Here, the ends of justice require that there occurs no loss to the person and property of anybody. After-all, human life is precious and the property exists for making the human life safe, secure and meaningful. If the property itself poses danger to human life, the property loses its significance and can no longer be protected. This is what the due process of law would mean. The show cause notice impugned herein, has been issued with a view to protect precious human life as it is apprehended by the NMC officials that the subject property may come tumbling down to the ground at any point of time, it being in highly dilapidated condition and thus it seeks to uphold due process of law.

6. Therefore, we are of the view that the impugned show cause notice, *prima facie*, does not have any connection whatsoever with the judgment and order dated 02.05.2017. Even then, if the petitioner is of the opinion that it does have some nexus with the said judgment and order and the petitioner is of the opinion that this notice is based upon incorrect factual position on the ground, the petitioner may approach the ordinary Civil Court for redressal of his grievance arising from the impugned show cause notice.

7. Accordingly, we find that this petition is not maintainable before this Court and it stands **dismissed**

with liberty to the petitioner to take recourse to ordinary civil law remedy, if any, keeping all questions open. No costs.

JUDGE

JUDGE

Kirtak