

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

WRIT PETITION NO.2657 OF 2022

Sudhakar Shamrao Mane, Umred, Dist. Nagpur and ors.

-vs-

The Municipal Council Thr. Its Chief Officer, Municipal Council Umred, Dist. Nagpur

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

Court's or Judge's Orders.

Shri Anil A. Dhawas, Advocate for petitioners.

Shri M. I. Dhatrak, Advocate for respondent.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

DATE : June 29, 2022

P.C.

Heard.

The challenge raised in this writ petition at the behest of the petitioners is to notice issued under Section 195(1)(2) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965 (for short, the said Act) by the Municipal Council calling upon the petitioners to vacate the respective shop blocks occupied by them since it has been found that the structure in which those shops are located is in a dilapidated and ruinous condition. In the said notice reference is made to the earlier notice dated 16/11/2019 making the same request. Since the petitioners are occupying those shop premises, they have challenged the said notices.

2. The learned counsel for the petitioners has referred to Resolution No.49 dated 30/06/2017 as well as Resolution No.166 dated 05/02/2021 to urge that the Municipal Council has resolved to relocate the 28 shop owners who were occupying

the shop centre by name N. K. Malak Shopping Centre. According to those resolutions the Municipal Council was obliged to provide alternate place to the said shop owners while constructing a new shopping complex. Without complying with those resolutions, the impugned notices have been issued. Relying upon the provisions of Section 195(3) of the said Act, it is submitted that the Municipal Council ought to have taken steps to repair the building in question instead of demolishing the same. On these counts the impugned notices are liable to be set aside.

3. The learned counsel for the respondent by referring to affidavit in reply submitted that before issuing the notice dated 16/11/2019 a structural audit of the said building had been undertaken. After obtaining structural audit report in November 2017 such notices have been issued. As per the structural audit report the building was in a dilapidated condition and beyond economical repair. The impugned notices have been issued under Section 195(1) and (2) of the said Act. Placing reliance on the decision in PIL No.01/2020 in *High Court on its own motion (In the matter of Jilani Building at Bhiwandi) vs. Bhiwandi Nizampur Municipal Corporation and ors.* **2022 SCC Online Bom 386**, he submitted that the petitioners have no legal right to continue in occupation in view of the dilapidated condition of the building. The learned counsel also submitted that the resolutions in question were not in accordance with the prevailing law and the petitioners had no right to claim alternate accommodation under those resolutions.

4. On perusing the documents on record and after hearing the learned counsel we find that the Municipal Council had obtained a structural audit report in November 2017 in which it was stated that the building was in dilapidated condition and beyond economical repair. It was not found fit for human habitation. The report recommended demolition of the same. This structural audit was undertaken by Visvesvaraya National Institute of Technology, Nagpur. Its report is not under challenge. Initial notice dated 16/11/2019 was issued by the Municipal Council when the shops were not vacated. This was followed by the impugned notices dated 09/05/2022. It has been stated therein that the building was in dilapidated condition and thus liable to be pulled down. We therefore find the said notices have been issued in the light of the structural audit report. The action has been taken in accordance with Section 195(1) and (2) of the said Act in the light of what has been stated in the said report. The petitioners cannot insist for the said structure to be repaired by relying upon Section 195(3) of the said Act. The observations of the Division Bench in *Bhiwandi Nizampur Municipal Corporation and ors* (supra) referred to by the learned counsel for the respondent support the stand of the Municipal Council.

5. Coming to the rights of the petitioners which they claim under resolutions dated 30/06/2017 and 05/02/2021 are concerned, we are not inclined to go into merits of those resolutions. If any such right has accrued in favour of the petitioners by virtue of those resolutions, the petitioners are free to agitate those rights in accordance with law. The petitioners

are free to pursue their legal remedy in that regard. Since the impugned notices have been issued under Section 195(1) and (2) of the said Act, it is not necessary to go into the legality of the said resolutions especially at the behest of the Municipal Council.

In that view of the matter, we do not find there is any case made out to interfere with the action of the Municipal Council in issuing the impugned notices.

The writ petition is dismissed with no order as to costs.

In the facts of the case, the impugned notices shall be enforced after a period of fifteen days from today.

(Urmila Joshi-Phalke, J.)

(A. S. Chandurkar, J.)

Asmita