

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

WRIT PETITION NO.2701/2022

(M/S. Hotel Karnal Biryani Centre through Proprietor Abdul Waheed Karnal s/o Abdul
Hameed Karnal

vs.

Nagpur Municipal Corporation, through its Commissioner and anr.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Aadil Anwar J. Mirza, Advocate for petitioner.
Shri J. B. Kasat, Advocate for respondents.

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

DATE :- JUNE 15, 2022.

The challenge raised in this writ petition is to the notice dated 17.05.2022 issued under Section 53 (1) of the Maharashtra Regional Town Planning Act, 1966 (for short, the said Act). By that notice the petitioner who claims to be the occupier of the premises prescribed therein has been called upon to remove the structure on the ground that there is no prior permission taken before erecting the same.

Shri Aadil Mirza, learned counsel for the petitioner submits that the structure in question is a tin shed which does not require any such permission. The petitioner is stated to be running an eating house in the said premises for which licence of the Public Health Department has been obtained. It is submitted that the notice in question ignores the fact that a temporary structure has been erected and hence that notice is not accordance with law.

Shri J. B. Kasat, learned counsel for the respondents submits that in absence of any permission even for a temporary structure, the provisions of Section

53 (1) of the said Act can be invoked. On inspection it was noticed that there was unauthorized development carried out by the petitioner to the extent of 95.20 square meters. The impugned notice grants 24 hours time to remove the structure. After complying with the statutory requirements, necessary action is being taken.

On hearing the learned counsel for the parties, it is seen that by the impugned notice the petitioner has been called upon to remove the structure standing on the plot in question. It has been stated that the structure has been erected without obtaining any prior permission under the applicable Rules. Notwithstanding the fact that the structure is in the form of a tin shed wherein an eating house is being run, it is not pointed out that such structure does not require any prior permission. Under the provisions of Section 53(1) of the said Act, notice of 24 hours has to be given which has been accordingly given in the impugned notice.

We therefore do not find any illegality committed in issuing such a notice by invoking the provisions of Section 53(1) of the said Act. There is no case made out to interfere in writ jurisdiction. The writ petition is therefore dismissed. No costs.

At this stage, the learned counsel for the petitioner seeks continuation of the interim relief for a period of two weeks. This request is opposed by the learned counsel for the respondents.

Since we find that there is no prior permission obtained for erecting the structure, there is no ground to continue ad-interim order for the said period.