

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

Writ Petition No.4011 of 2022

With

Writ Petition No.3230 of 2022

Writ Petition No.4011 of 2022

1. Shri Balkrishna S/o Ramnivas Sharma,
Aged 74 years,
Occupation – Business.
2. Shri Vipin S/o Balkrishna Sharma,
Prop. R.K.B. Mens Wear,
Aged 36 years,
Occupation – Business,
Respondents No.4 & 5
Both R/o Flat No.110, Tower-F,
Godrej Anandam, Ganeshpeth,
Nagpur-440018.

... Petitioners

Versus

1. Nagpur Municipal Corporation,
Nagpur, through its Commissioner,
Civil Lines, Nagpur.
2. The Assistant Commissioner,
Nagpur Municipal Corporation,
Gandhibag Zone-6, Mahal, Nagpur.
3. The Dy. Commissioner,
Encroachment & Enforcement Department,
Nagpur Municipal Corporation,
Gandhibag Zone-6, Mahal, Nagpur.
4. Niraj S/o Krishnakumar Sharma,
Aged 32 years,
Occupation – Business,
R/o o8 Building-C, Ayurvedic Layout,
NIT Complex, Sakardara, Nagpur.

... Respondents

Shri C.S. Kaptan, Senior Advocate, with Shri M.S. Sharma, Advocate for Petitioners.

Shri A.R. Sambre, Advocate for Respondent Nos.1 to 3.

Shri Anand Jaiswal, Senior Advocate, with Shri S.A. Sahu, Advocate for Respondent No.4.

With
Writ Petition No.3230 of 2022

Mr. Niraj S/o Krishnakumar Sharma,
Aged 32 years,
Occupation – Business,
R/o 108, Building-C,
Ayurvedic Layout,
NIT Complex, Sakardara, Nagpur.

... Petitioner

Versus

1. Nagpur Municipal Corporation,
Nagpur, through its Commissioner,
Civil Lines, Nagpur.
2. The Assistant Commissioner,
Nagpur Municipal Corporation,
Gandhibag Zone-6, Mahal, Nagpur.
3. The Dy. Commissioner,
Encroachment & Enforcement Department,
Nagpur Municipal Corporation,
Gandhibag Zone-6, Mahal, Nagpur.
4. Shri Balkrishna S/o Ramnivas Sharma,
Aged 74 years,
Occupation – Business.
5. Shri Vipin S/o Balkrishna Sharma,
Prop. R.K.B. Mens Wear,
Aged 36 years,
Occupation – Business.

Respondents No.4 & 5,
R/o Flat No.1103, Tower-F,
Godrej Anandam, Ganeshpeth,
Nagpur-440018.

... Respondents

Shri Anand Jaiswal, Senior Advocate, with Shri S.A. Sahu, Advocate for Petitioner.

Shri A.R. Sambre, Advocate for Respondent Nos.1 to 3.

Shri C.s. Kaptan, Senior Advocate, with Shri M.S. Sharma, Advocate for Respondent Nos.4 and 5.

CORAM : SUNIL B. SHUKRE & G.A. SANAP, JJ.

DATE : 29th SEPTEMBER, 2022

ORAL JUDGMENT (PER SUNIL B. SHUKRE, J.) :

1. Rule. Rule is made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

2. Although there have been argument and counter-argument over the legality or otherwise of the impugned notice of demolition dated 22-2-2021 made by the learned counsel appearing for the rival parties in both these petitions, we find that the notice of demolition impugned in Writ Petition No.4011 of 2022 sought to be implemented in Writ Petition No.3230 of 2022 cannot stand to the scrutiny of law. This notice is contradictory in nature, in the sense that while it points out that the portion of the property in question, i.e. Ground + 2 structure, admeasuring 56 square meters, is in dilapidated condition, it goes on to direct the petitioner in Writ Petition No.3230 of 2022 to demolish the entire Ground + 2 structure of the property. Of course, it then refers to the cracks developed in the walls and damage to the *patni* slab, but it does not state that because of these cracks to the walls and damage to the *patni* slab, the

entire house has been rendered a dangerous structure, requiring demolition.

3. Shri Anand Jaiswal, learned Senior Advocate, appearing for the petitioner in Writ Petition No.3230 of 2022, submits that the impugned notice of demolition dated 22-2-2021 is very clear and it is based not only on the report of the Structural Auditor, but also on the report of the Inspection Officer of the Nagpur Municipal Corporation and, therefore, the said notice is required to be implemented, and in any case, once the subjective satisfaction is reached by the Officer of the Corporation regarding dilapidated state of the building, this Court cannot sit in appeal, is the law well-settled long back. We accept the submission of the learned Senior Advocate on the question of the law on the point raised by him having been settled long back, but for that matter, there has to be a firm foundation provided by the facts of the case. In the present case, the foundation of the facts, as seen from the impugned notice of demolition dated 22-2-2021, is absent. This conclusion is also supported by what we have noted after going through the inspection report made available by the Corporation for our perusal today. Even the inspection report is identical with the statements made in the impugned notice of demolition. It also states that the dilapidated portion of the building has an area of 14 x 4 square meters, which is equivalent to 56 square meters of the total

area of the building in question, which is about 99.10 square meters. The inspection report does not identify as to which of the portions of the entire building has become dilapidated and which requires immediate demolition. One of the parties obtained subsequently another structural audit report from another Structural Engineer and this report is not consistent with the report submitted by the earlier Structural Engineer, on whose report the petitioner in Writ Petition No.3230 of 2022 is placing reliance. In such a case, therefore, it is better that a structural stability report from a reputed Structural Engineer is obtained and thereafter a fresh decision is taken by the Corporation regarding demolition of the structure. The entire exercise can be directed to be completed in a time-bound manner.

4. Accordingly, we quash the impugned notice of demolition dated 22-2-2021 and direct the Nagpur Municipal Corporation to conduct structural stability audit of the structure in question from the reputed Structural Engineer.

5. The Head of the Department in Civil Engineering Branch in Shri Ramdeobaba College of Engineering and Management, Nagpur, is appointed by consent of rival parties, as the Structural Auditor with a request to him to conduct structural stability audit of the property bearing House No.13, situated at Ward No.29, Circle No.7/12A,

Division No.2, Tilak Road, Near Abhyankar Statue, Mahal, Nagpur, with a further request to submit his structural stability report to the Nagpur Municipal Corporation within a period of fifteen days from the date of inspection of the building. The inspection of the building may be done by him in the presence of the rival parties and for this purpose, the rival parties shall provide all assistance to the Structural Auditor so appointed by this Court.

6. The remuneration to be paid to the Structural Auditor and the expenses of the inspection and the report shall be equally borne by the petitioners in both these petitions.

7. We direct the Nagpur Municipal Corporation to take an appropriate decision regarding the issue involved in these petitions within a period of seven days from the date of receipt of the report of the structural stability report.

8. We also direct that the entire exercise be completed within a period of four weeks from the date of the order.

9. With the above directions, both these petitions are disposed of. Rule accordingly. No costs.