

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

WRIT PETITION NO.5262/2022

Pradeep S/o Champalal Jaiswal,
aged 63 Yrs., Occ. Business,
R/o 1/5, H.I.G. Indora, Dayanand Nagar,
Nagpur and Permanent R/o Near Bahuli,
Tah. Tumsar, Dist. Nagpur.

... Petitioner

- Versus -

1. The Chairman,
Nagpur Improvement Trust,
L.I.C. Square, Sadar, Nagpur.

2. The Section Officer (North),
Nagpur Improvement Trust,
Nagpur.

... Respondent

Mr. P.P. Kotwal, Advocate for the Petitioner.
Mr. G.A. Kunte, Advocate for Respondent Nos.1 and 2.

**CORAM : SUNIL B. SHUKRE AND
G.A. SANAP, JJ.**

DATE : 15.9.2022

ORAL JUDGMENT (Per Sunil B. Shukre, J.)

Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. It is the contention of learned counsel for the petitioner that the impugned notice affixed on the subject property was issued without granting opportunity to the petitioner. It is further submitted that if such opportunity of hearing was granted, the petitioner would have been able to convince the authority that he was not an encroacher on the property but a lawful occupier of the property which is evident from the allotment letter dated 3.12.1987 (page 17 of the petition), the conditions of which including the payment of ground rent are already fulfilled by the petitioner. Learned counsel also submits that the entire lease amount up to 2017 has also been paid by the petitioner and, therefore, it does not lie in

the mouth of Nagpur Improvement Trust to say that the petitioner is an encroacher on the subject property.

3. Learned counsel for the respondents submits that a civil suit was filed by the petitioner in respect of the same issue and it was withdrawn by the petitioner and, therefore, now, the petitioner cannot agitate the same issue before this Court. He also submits that possession has already been taken over by the respondents way back on 10.12.2021 and, therefore, the petitioner continues in the property as illegal occupier and in the nature of an encroacher.

4. By way of clarification, learned counsel for the petitioner submits that in pursuance of the liberty granted by the Civil Court, a fresh civil suit has been filed by the petitioner.

5. Whatever be the contentions of the rival parties, one thing which comes to the fore is that the petitioner appears to

have not been granted any opportunity of hearing before the impugned notice was issued to him. Grant of such an opportunity to the petitioner was necessary in the present case as there is something for the petitioner to say in his defence. From the document of allotment of subject property to the petitioner and the submissions that not only the ground rent but entire lease amount up to 2017 has been paid by the petitioner, it cannot be *prima facie* said that the petitioner could be straight-way considered to be a rank encroacher on the subject property. In such circumstances, it was necessary for the Nagpur Improvement Trust to have granted reasonable opportunity of hearing to the petitioner and not to have acted in haste. Unfortunately, we gather from the submissions made by the learned counsel for the respondents that the subject property has also been reallocated to some other person thereby introducing third party interest in property leading to creation of more complications in the matter. In such a case, the Nagpur Improvement Trust ought to have acted with caution and circumspection especially when there is an

allotment order dated 3.12.1987 issued in favour of father of the petitioner.

6. In view of the above, we partly allow the petition and quash and set aside the impugned notice. The matter is remanded back to respondent No.1 for taking a fresh decision in the matter after granting reasonable opportunity of hearing. The decision shall be taken as early as possible preferably within two months from the date of appearance of the petitioner before respondent No.1. The petitioner shall appear before respondent No.1 on 28.9.2022. We grant liberty to respondent No.1 to make enquiry into the aspect of existence of the legal heirs and their giving no objection in the matter. All contentions raised by the parties are kept open.

7. Rule is made absolute in the above terms. No costs.

(G.A. SANAP, J.)

(SUNIL B. SHUKRE, J.)