

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

WRIT PETITION 2103 OF 2022

1. Sanjay Jagannath Sontakke,
Aged about 44 yrs, Occ. Business,
R/o. Plot No. 168, Abhyankar Nagar,
Nagpur
2. Arpit s/o. Kiran Kalode,
Aged about 33 yrs, Occ. Private Service,
R/o. Plot No. 166, Abhyankar Nagar,
Nagpur
3. Santosh s/o. Dinkar Khekale,
Aged about 48 yrs, Occ. Private Service,
R/o. Plot No. 92, Abhyankar Nagar,
Nagpur
4. Pramod s/o. Vinayak Nahatkar,
Aged about 62 yrs, Occ. Retired,
R/o. Plot No. 91, Abhyankar Nagar,
Nagpur
5. Dr. Avinash s/o. Kesharao Pohali,
Aged about 62 yrs, Occ. Medical practitioner,
r/o. Plot No. 169, Abhyankar Nagar,
Nagpur, Nagpur
6. Mr. Vivek s/o. Sudhakar Bhusari,
Aged about 56 yrs, Occ. Business,
R/o. Plot No. 93, Abhyankar Nagar,
Nagpur

.....PETITIONERS

...VERSUS...

1. Nagpur Municipal Corporation,
through its Commissioner,
Civil Lines, Nagpur 440 001
2. Nagpur Improvement Trust,

through its Chairman, Station Road,
Nagpur 440 001

3. The Station House Officer,
Police Station, Bajaj Nagar,
Nagpur 440 022

4. The Assistant Commissioner of Police
(Traffic), Civil Lines, Nagpur 440 001

5. The Assistant Director
(Town Planning), Town Planning
Department, Civil Lines,
Nagpur 440 001

6. Shri Dilip s/o. Vivekanand Belsare,
Aged about 66 yrs, Occ. Business,
R/o. 167, Abhyankar Nagar, Nagpur03

7. Neha d/o. Dilip Belsare,
Aged about 30 yrs, Occ. Business
R/o. 166, Abhyankar Nagar,
Nagpur

..RESPONDENTS

Mr. Anand Parchure, counsel for petitioners,
Mr. J.B. Kasat, counsel for respondent 1,
Mr. S.M. Puranik, counsel for respondent 2,
Mr. N.S. Rao, AGP for respondents 3 to 5/State.
Mr. S.K. Mishra, senior counsel assisted by
Mr. Karan Gour, for respondents 6 & 7.

CORAM:- ROHIT B. DEO & MRS. VRUSHALI V. JOSHI, JJ.
DATE : 01.03.2023

JUDGMENT (Per: Rohit B. Deo, J.)

Heard.

2. Two aspects fall for consideration in the present
petition.

3. The first aspect touches the demolition notice which is issued to respondents 6 and 7. We are not inclined to delve deeper in the said aspect, inasmuch as, we are informed that the respondents 6 and 7 have not only preferred a statutory appeal under Section 47 of the Maharashtra Regional and Town Planning Act, 1966 ("MRTP Act") which is pending, respondents 6 and 7 have also instituted Regular Civil Suit 391/2021 which is also pending, although in the civil suit, injunctive relief is refused. We are further informed by learned senior counsel Mr. S.K. Mishra that though the injunction is refused, the interim order is continued for three weeks to enable respondents 6 and 7 to seek the appellate remedy. We trust and hope, that the aforesaid proceedings, particularly the appeal which is pending before the State Government is disposed of, as expeditiously as possible, and in any event, within the next 90 days.

4. The other aspect touches the user of the subject premises. The issue is whether the respondents 6 and 7 were, till we passed an interim order, running a Convenience Shop as appears to be permissible under the Unified Development Control Rules or respondents 6 and 7 were carrying on commercial

activity of cafe, which may, or may not, fall within the ambit of the definition of Convenience Shop.

5. Respondents 6 and 7 have filed on record undertaking dated 1.3.2023 and we may extract the same verbatim.

“The respondent number 6 and 7 most humbly and respectfully submits as under:

The respondent number 6 and 7 undertake that they would use only the ground floor of the premises bearing plot number 167, NMC House number 311/A/167 in ward number 74 city survey number 2368 Mouza Ambazari situated in Abhyankar Nagar, Nagpur as a Collection Centre.

Hence this undertaking”.

6. In view of the undertaking that only the ground floor of the subject premises shall be used as a Collection Centre for food articles cooked/prepared at the premises situated in the other locality, we dispose of the petition with the observation that the undertaking dated 1.3.2023 shall continue to hold the field till the decision in the statutory appeal under Section 47 of the MRTP Act.

7. If the decision in the statutory appeal is adverse to the respondents 6 and 7, and if the user which is claimed is not permitted, we expect respondents 6 and 7 to discontinue the user subject of course, to the remedy of assailing the adverse order.

We further expect the planning authority to take appropriate action if the decision of the State Government is adverse to respondents 6 and 7.

8. If the State Government records a finding in the appeal that the user claimed is permissible, we grant liberty to respondents 6 and 7 to approach this Court seeking an appropriate order relieving respondents 6 and 7 of the undertaking given.

9. The petition is disposed of in the aforestated terms.

(Mrs. Vrushali V. Joshi, J.) (Rohit B. Deo, J.)

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