

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

WRIT PETITION NO. 1751 OF 2018

1. Shakti Enterprises,
through its proprietor
Dnyaneshwar Rupchand Rawate,
Aged about 53 years, Occ. Business,
Plot no.1, Bandu Soni layout,
IT park road, Parsodi, Nagpur

2.Yuvraj Electronics and Electrical
through its proprietor
Yuvraj Netramji Kinkar,
aged about 49 yrs, Occ. Business,
Plot No. 1, Bandu Soni layout,
IT park Road, Parsodi, Nagpur

3. Roopsangam Beauty Parlor,
through its proprietor
Kalpana Prasram Jambulkar
Aged about 45 yrs, Occ. Business,
Plot No. 1, Bandu Soni layout,
IT park Road, Parsodi, Nagpur

4. Rawate Bandhu Cycle Store,
through its proprietor
Duleshwar Bhagchand Rawate,
aged about 45 yrs, Occ. Business,
Plot No. 1, Bandu Soni layout,
IT park Road, Parsodi, Nagpur

5. Vikas Bichayat Kendra
through its proprietor
Tarabi Vinayakrao Dunarkar,
aged about 62 years, Occ. Business,
Plot No. 1, Bandu Soni layout,
IT park Road, Parsodi, Nagpur

.....**PETITIONERS**

...V E R S U S...

1.State of Maharashtra

through its Secretary,
Ministry of Urban Development,
Mantralaya, Madam Cama Road,
Mumbai 32

2. The Regional Officer (West),
Nagpur Improvement Trust,
Nagpur

3. The Chairman,
Nagpur Improvement Trust,
Nagpur

4. Girdhar S. Butle,
aged major, occ. Business,
Plot No. 1, Bandu Soni layout,
IT park Road, Parsodi, Nagpur

5. Shri Aashish Masram,
aged major,
Plot No. 1, Bandu Soni layout,
IT park Road, Parsodi, Nagpur

6. Shri Mahajan Paurkar,
aged major,
Plot No. 1, Bandu Soni layout,
IT park Road, Parsodi, Nagpur

.....**RESPONDENTS**

Mr. B. N. Mohata, counsel for the petitioners,
Mrs. K. R. Deshpande, AGP for respondent 1,
Mr. Dhoble, counsel h/f Mr. R.O. Chhabra, counsel for respondent 3,
Mr. V. S. Mishra, counsel for respondent 4.

CORAM : ROHIT B. DEO AND
MRS. VRUSHALI V. JOSHI, JJ.

DATE : 10-03-2023

ORAL JUDGMENT (PER : Rohit B. Deo, J.)

Rule. Rule made returnable forthwith. Heard finally
with consent of the parties.

2. The challenge in the petition is to the show cause notices dated 21-12-2015 and 13-3-2018 issued by respondent 2 – Regional Officer (West), NIT, whereby and whereunder the owner of the subject property Mr. Giridhar Shrawanji Butale is called upon to forthwith remove the unauthorized construction.

3. Perusal of the notice dated 21-12-2015 reveals that the notice is restricted to unauthorized construction which is contrary to and/or beyond the sanctioned plan. Similarly, notice dated 13-3-2018 is again issued to the land owner reiterating the contents of the notice issued in the year 2015.

4. The petitioners claim to be tenants in the subject land. The owner Mr. Giridhar S. Butle is impleaded as respondent 4.

5. We have perused the averments in the petition.

6. In paragraph 7 of the petition, there is a reference to the agreement of tenancy purportedly executed by the land owner. In paragraphs 8 and 9 of the petition, the reference is to the statutory notices issued by the NIT and a grievance is made that the petitioners were not issued similar notice. There is no other material averment in the petition except a general and bald statement that the notice of

demolition is issued by the NIT, acting hand in glove with the land owner.

7. The ground in the petition is breach of principles of natural justice. We have put a pointed query to the learned counsel for the petitioners whether there is any statutory requirement that the NIT was required to issue the notice also to the alleged tenants. Nothing is brought to our notice to infer that in addition to the owner, the occupier is also required to be noticed.

8. Learned counsel for the petitioners Mr. Mohata invites our attention to Section 53 of the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act) which reads thus :

53. Power to require removal of unauthorised development

[(1) (a) Where any development of land has been carried out as indicated in clause (a) or (c) of sub-section (1) of section 52, the Planning Authority may, subject to the provisions of this section, serve on the owner, developer or occupier a prior notice of 24 hours requiring him to restore the land to conditions existing before the said development took place;

(b) if the owner, developer or occupier fails to restore the land accordingly, the Planning Authority shall immediately take steps to demolish such development and seal the machinery and materials used or being used therefor.

(1A) Where any development of land has been carried out as indicated in clause (b) or (d) of sub-section (1) of section 52, the Planning Authority may, subject to the provisions of this section serve one months' notice on the owner, developer or occupier requiring him to take necessary steps as specified in the notice.]

(2) *In particular, such notice may, for purposes of sub-section (1), require—*

(a) the demolition or alteration of any building or works ;

(b) the carrying out on land of any building or other operations ; or

(c) the discontinuance of any use of land.

(3) *Any person aggrieved by such notice may, within the period specified in the notice and in the manner prescribed, apply for permission under section 44 for retention on the land of any building or works or for the continuance of any use of the land, to which the notice relates, and pending the final determination or withdrawal of the application, the mere notice itself shall not affect the retention of buildings or works or the continuance of such use.*

(4) *The foregoing provisions of this Chapter shall, so far as may be applicable, apply to an application made under sub-section (2).*

(5) *If the permission applied for is granted, the notice shall stand withdrawn; but if the permission applied for is not granted, the notice shall stand; or if such permission is granted for the retention only of some buildings, or works, or for the continuance of use of only a part of the land, the notice shall stand withdrawn as respects such buildings or works or such part of the land, but shall stand as respects other buildings or works or other parts of the land, as the case may be, and thereupon, the owner shall be required to take steps specified in the notice under sub-section (1) as respects such other buildings, works or part of the land.*

(6) *If within the period specified in the notice or within the same period after the disposal of the application under sub-section (4), the notice or so much of it as stands is not complied with, the Planning Authority may—*

(a) prosecute the owner for not complying with the notice; and where the notice requires the discontinuance of any use of

land any other person also who uses the land or causes or permits the land to be used in contravention of the notice; and

(b) where the notice requires the demolition or alteration of any building or works or carrying out of any building or other operations, itself cause the restoration of the land to its condition before the development took place and secure compliance with the conditions of the permission or with the permission as modified by taking such steps as the Planning Authority may consider necessary including demolition or alteration of any building or works or carrying out of any building or other operations; and recover the amount of any expenses incurred by it in this behalf from the owner as arrears of land revenue.

(7) Any person prosecuted under clause (a) of sub-section (6) shall, on conviction, [be punished with imprisonment for a term [which shall not be less than one month but which may extend to three years and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees], and in the case of a continuing offence with a further daily fine which may extend to two hundred rupees] for every day during which such offence continues after conviction for the first commission of the offence.]

[(8) The Planning Authority shall, by notification in the Official Gazette, designate an officer of the Planning Authority to be the Designated Officer for the purposes of exercise of the powers of the Planning Authority under this section and sections 54, 55 and 56. The Designated Officer shall have jurisdiction over such local area as may be specified in the notification and different officers may be designated for different local areas.]”

Mr. Mohata is emphasizing on the word “or occupier” in sub-section (1) of Section 53. We are afraid that the aforesaid provision is clearly misread and misconstrued. Sub-section (1) uses the word owner, developer or occupier in a disjunctive manner. We cannot and will not, read into sub-section (1), a requirement that even

if the owner of the property is duly served with the statutory notice, every person who may be in occupation shall also be separately served the statutory notice.

In a given situation, the illegal construction may not have been carried out by the owner or developer. Indeed, the owner or developer may not be in the picture at all. The construction may have been carried out by a rank encroacher on private or public property. In a given case, the Planning Authority may not be aware of the whereabouts of the owner and if the construction is to be demolished, in such situation, the occupier may have to be noticed and heard.

9. Mr. B.N. Mohta would submit, referring to Sub-section (3) of Section 53 that since “any person” aggrieved by the notice of removal of construction is entitled to seek permission under Section 44 for retention, or for continuance of any use of the land, implicit is a requirement that every person in occupation of the subject construction be noticed and heard. We are not persuaded to agree. We may extract Section 44 of the Act.

44.Application for permission for development.

[(1)] Except as otherwise provided by rules made in this behalf, any person not being Central or State Government or local authority intending to carry out any development on any land shall make an application in writing to the Planning Authority for permission in such form and containing such particulars and accompanied by such documents, as may be prescribed :

[Provided that, save as otherwise provided in any law, or any rules, regulations or by-laws made under any law for the time being in force, no such permission shall be necessary for demolition of an existing structure, erection or building or part thereof, in compliance of a statutory notice from a Planning Authority or a Housing and Area Development Board, the Bombay Repairs and Reconstruction Board or the Bombay Slum Improvement Board established under the Maharashtra Housing and Area Development Act, 1976.]

[(2) Without prejudice to the provisions of sub-section (1) or any other provisions of this Act, any person intending to execute [an Integrated Township Project] on any land, may make an application to the State Government, and on receipt of such application the State Government may, after making such inquiry as it may deem fit in that behalf, grant such permission and declare such project to be [an Integrated Township Project] by notification in the Official Gazette or, reject the application.]

The expression “any person aggrieved” in Sub-section (3) of Section 53 will have to be understood in the context of the right to apply for permission for retention or continuation of the user of land, as envisaged under Section 44 of the Act. If the owner of the property, and in the present case, the owner is before us, is not interested in applying for the requisite permission under Section 44 of the Act, we can not read into the statutory regime an independent right available to a tenant of the subject property to apply under Section 44 of the Act for retention or continuation of user, against the wishes of the landlord.

10. We have perused the affidavit in response filed on behalf of the NIT. We may reproduce paragraphs 3, 4 and 5 of the affidavit in response which read thus :

“3. It is submitted that the Respondent Nos. 5 and 6 who are resident of Bandu Soni Layout and are neighbours of the petitioner had lodged the complaint with this respondent about unauthorized shops occupied by the petitioners, because of which shops, the citizens in the area are facing lot of difficulties. They complaint that some shop keepers have encroached up till the foot path thereby creating problem for the pedestrian and causing danger of the life and property of the pedestrian. Because of the unauthorized construction, the residents are put to face lot of harassments and therefore, the unauthorized construction should be removed. A copy of the complaint dated 6.2.2018 given by the residents is annexed to this reply affidavit as ANNEXURE-R2-1. After receipt of this complaint a letter dated 13.3.2018 has been issued to the Respondent No. 4 for complying with the notice dated 21.12.2015 and for removal of unauthorized structure.

4. It is submitted that the build up area of 95.174 Sq.M. is only sanctioned/regularized. For the rest of the area which was not sanctioned, the Respondent No. 4 was called upon to remove the unauthorized structures. A copy of the map showing sanctioned built up area and also showing the unauthorized structures to be removed, marked and delineated in red lines, is filed herewith as ANNEXURE R2-2.

5. It is submitted that the impugned notices are in accordance with law. Sufficient time was available with the petitioners to remove their structures. There is no breach of principle of natural justice. The petitioner cannot claim protection of their unauthorized structures. There is no violation of any fundamental right of the petitioner. The petition is

devoid and substance and it be so rejected as such.”

The NIT has stated on oath that only the structure which is not sanctioned, and which is delineated in the red ink in the plan, Annexure R-2-2 shall be removed. We accept the assurance of the NIT. We further note that there is no rebuttal filed by the petitioner to the affidavit in response dated 22-12-2018 filed by the NIT. The averment on oath that part of the construction is illegal and is not sanctioned has gone un rebutted. In such a situation, apart from the fact that having issued notice to the land owner, the NIT was not required to issue notices to all the occupants, even if such a requirement is read into the statutory provision arguendo, we are not inclined to grant any relief in equity to a person, who has not even denied that the part of the construction which the NIT has delineated in red ink in the plan, is illegal.

Learned counsel for the petitioner Mr. B.N. Mohata submits that the petitioners have no remedy to approach the civil court in view of the provisions of Section 149 of the MRTP Act as interpreted by this Court. We are not inclined to delve deeper in as much as we do not find that there is any substance in the grievance of the petitioners.

11. We may note that Mr. B.N. Mohta has relied on the

following decisions:

1. *Sundar Raj vs. Kidangoor Grama Panchayat and another*, [WP(C) No. 115236/2020(D)] “**Sundar Raj**”,
2. *M/s. Ban Ganga Developers vs. The State of West Bengal & Ors*, (WPA 16438/2019 with CAN 1/2021), “**M/S. Ban Ganga Developers**”
3. *S.L. Kapoor vs. Jagmohan* [1981 AIR (SC) 1980], “**S.L. Kapoor**”
4. *Satish Nambiar vs. Union of India*, 2007(5) Bom.C.R. 247, “**Satish Nambiar**”
5. *Raj Restaurant vs. Municipal Corporation of Delhi*, 1982 DGLS(SC)161, “**Raj Restaurant**”.

In **Sundar Raj**, the owner of the property was not noticed prior to the issuance of the demolition order. **M/s. Ban Ganga Developers** was again a petition instituted by the owner and developer of the building. **S.L. Kapoor** articulates that principles of natural justice must be followed, even if the order is administrative, if the order entails civil consequences. **Satish Nambiyar** is a decision rendered on facts. This Court articulated in paragraphs 24 that the wider issues are not decided, and as a fact, the impugned order is held not vitiated for want of compliance with the principles of natural justice. **Raj Restaurant** holds that order of refusing to renew license for running a restaurant cannot be refused without hearing the license holder.

None of the decisions cited by Mr. B.N. Mohata have any bearing on the issue involved in the present petition. We have noted supra, that apart from the fact, that the statutory notices are issued to the owner of the property, and as tenant the petitioner may not have an independent right to be noticed and heard, as a fact, there is no rebuttal to the averment of the Planning Authority that part of the construction is contrary to the sanctioned plan and that the demolition shall be restricted to such part.

12. We see no reason to interfere in writ jurisdiction. The petition is dismissed with cost of Rs. 10,000/- (Rupees Ten Thousand) to be paid to respondent 2 – Nagpur Improvement Trust, Nagpur within the next two weeks.

(Mrs. Vrushali V. Joshi, J.)

(Rohit B. Deo, J.)

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