

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

WRIT PETITION (WP) 3522/2022

Smt. Kaushalya Vijay Jadhav
Aged about- years Occupation- Nil
R/o Mahagaon Tahsil Mahagaon
District Yavatmal

..... PETITIONER

// VERSUS //

1. The Chief Executive Officer,
Nagar Panchayat, Mahagaon Tahsil
Mahagaon District Yavatmal
Email:- npmahagaon@gmail.com

2. The Civil Judge Junior Division
and Judicial Magistrate First Class,
Mahagaon District Yavatmal

3. Adv Suresh Rajabhau Raut
President, Advocate Bar Association,
Mahagaon Tahsil Mahagaon
District Yavatmal
Added as per order dt. 24.3.2023

.... RESPONDENT(S)

Mr. K.J. Topale with Mr. I.M. Ghongade, Advocates for the petitioner
Mr. P.P. Deshmukh, Advocate for respondent 1
Mr. N.S. Rao, AGP for respondent 2
Mr. V.N. Patre, Advocate for respondent 3/intervenor

**CORAM : ROHIT B. DEO AND
M. W. CHANDWANI, J.J.**

DATED : 19/07/2023

ORAL JUDGMENT : (PER:- ROHIT B. DEO, J.)

Heard. Rule. Rule made returnable forthwith by consent of the learned Counsel for the parties.

2. The petitioner is challenging the communication dated 16.06.2022 issued by the Chief Executive Officer, Nagar Panchayat, Mahagaon whereby the petitioner is asked to remove the Tin shed, which according to the Nagar Panchayat is unauthorized, and which is an obstruction to free and smooth ingress and egress to the building in which the Court of Civil Judge Junior Division and Judicial Magistrate First Class, Mahagaon is situated.

3. We have perused the affidavit in response dated 05.04.2023 which is filed on behalf of the Nagar Panchayat.

4. The Nagar Panchayat states that the petitioner has constructed the Tin shed without seeking prior permission from the Planning Authority, which is the Nagar Panchayat. It is further stated that illegal construction is causing obstruction to free movement to and from the Court building. The Nagar Panchayat asserts that the Shed is inspected and only thereafter notice under Section 54 of the Maharashtra Regional and Town Planning Act, 1966 (for short the "MRTP Act") is issued. It is further stated that the petitioner has preferred an application dated 20.03.2023 and the learned Counsel

informed the petitioner to apply online, which is mandatory. It is further stated that after the notice under Section 54 of the MRTP Act, notices under Sections 52 and 53 of the MRTP Act are issued. It was only after the said notices that the petitioner applied online on 26.03.2022.

5. According to the Nagar Panchayat several deficiencies in the online application were noticed by the concerned Engineer and the deficiencies are uploaded. Scrutiny Report dated 04.04.2022 is placed on record.

6. According to the learned Counsel, again notice dated 16.06.2022 was issued to the petitioner asking her to remove the illegal construction.

7. In view of the stand of the Nagar Panchayat, we do not find any reason to interfere in the writ jurisdiction.

8. We are not expected in writ jurisdiction to decide whether the construction is legal or illegal. The petitioner, even otherwise, has alternative statutory remedy in the matter. We may, however, note the specious plea that the petitioner has deemed permission. This plea we are noting only for rejection. It is well settled that the concept or legal fiction of deemed permission is triggered only, and only if, the plan is in

accordance with the Building Rules and Regulations. If the construction is not legal, the question of deemed permission just does not arise.

9. The writ petition is **dismissed**.

10. Needless to say, the interim order dated 29.06.2022 stands vacated forthwith.

(M. W. CHANDWANI, J.)

(ROHIT B. DEO J.)