



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
WRIT PETITION NO. 6061 OF 2022**

M/s Hariganga Alloys & Steel
through its authorized representative
Shri Harish Agrawal, Aged about 58 years,
Occ. Business situated at Old Motor Stand,
Itwari, Nagpur-440 008

...Petitioner

// VERSUS //

Nagpur Municipal Corporation,
through its Deputy Municipal
Commissioner, Nagpur

... Respondent

Shri Madhur Deo Advocate for the petitioner.
Shri J.B.Kasat, Advocate for the respondent.

**CORAM : ANIL S. KILOR, J.
DATED : 18th DECEMBER, 2023.**

ORAL JUDGMENT :

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

2. In this writ petition, the challenge is raised to the order dated 3rd September, 2022 passed by the Adhoc District Judge-1, Nagpur in Misc. Civil Appeal No. 103 of 2013 dismissing the appeal filed under Section 81 of the Maharashtra Municipal Corporation Act, 1949 (in short hereinafter referred as 'Corporation Act, 1949').

3. The petitioner entered into the agreement of lease with the respondent Corporation in the year 1981. It was agreed between them the appellant would construct 1000 square meter belonging to Corporation. The cost of construction would be adjusted towards lease

amount. Accordingly, the appellant made a construction incurring expenses to the tune of Rs.17,02,813/-. The deposit to the petitioner got exhausted in the year 1999. Thereafter, it is the case of the petitioner that instead of renewing the lease, the Corporation enhanced the rent from time to time.

4. On 18th January, 2013, the respondent Corporation issued notice under Section 76 of the City of Nagpur Corporation Act, 1948 calling upon the petitioner to vacate the said leased premises within 30 days. The petitioner replied the said notice. The petitioner was heard on 22nd March, 2013 and the order of eviction was passed which was the subject matter of challenge under Section 81 of the Corporation Act, 1949 before the Adhoc District Judge-I, Nagpur. The said appeal came to be dismissed vide impugned judgment and order dated 3rd September, 2022. Hence, this petition.

5. I have heard learned counsel for the respective parties.

6. Shri Deo, learned counsel for the petitioner submits that there is no compliance of Section 81-B(2) of the Corporation Act, 1949 before passing the impugned order of eviction.

7. It is further pointed out that the hearing granted in the present matter was post-decisional hearing which has held to be valid by the District Judge, contrary to the decision of the Hon'ble Supreme Court

of India in the case of H.L.Trehan and others Vs. Union of India and others¹.

8. It is further argued that the order dated 22nd March, 2013 cannot be considered as order of eviction passed under Section 81 of the of the Corporation Act, 1949, in absence of any findings recorded on the objection raised by the petitioner.

9. On the other hand, Shri Kasat, learned counsel for the respondent-Corporation supports the order of eviction passed by the Assistant Commissioner and the order passed by the District Judge, Nagpur, dismissing the appeal.

10. He submits that the order of eviction is just and proper and made in compliance of provision of City of Nagpur Corporation Act, 1948. He, therefore, prays for dismissal of the present writ petition.

11. In light of rival contentions of the parties, I have perused the record and the impugned order.

12. The order issued by the Assistant Commissioner on 18th January, 2013 shows that despite the notice was served upon the petitioner, the petitioner failed to submit his objection/reply/explanation/representation in writing within 30 days and therefore, the Assistant Commissioner directed the petitioner to vacate the premises in question within 30 days from the date of such order.

1 1989(1) SCC 764

13. It is pertinent to note that the reference column which is relating to letter issued by the Corporation calling explanation is blank. Therefore, I find substance in the submission made by the learned counsel for the petitioner that no notice or letter was issued prior to the passing of order of eviction under Section 81 of the Corporation Act, 1949.

14. Section 81-B(2) of the Corporation Act, 1949 says that before an order under Sub-section (1) is made against any person, the Commissioner shall issue notice in writing in the manner provided under Sub-section (2), calling upon all person concerned to show cause why an order of eviction should not be made.

15. In the case at hand nothing has been brought on record to show the compliance of sub-section (2) of Section 81-B of the Corporation Act, 1949.

16. Furthermore, if the order dated 22nd March, 2013, is considered as an order under Section 81 of the Corporation Act, 1949, no reasons are recorded in compliance with sub section (1) of Section 81-B of the Corporation Act, 1949 as regards the satisfaction of the Commissioner for passing the order of eviction. If the order dated 22nd March, 2013 is not treated as order under Section 81 of the Corporation Act, 1949 but the order dated 18th January, 2013 is considered as order under Section 81 of the Corporation Act, 1949 in that case hearing on 22nd March, 2013 is a post-decisional hearing.

17. The Hon'ble Supreme Court of India in the case of *H.L.Trehan and others Vs. Union of India and others* (supra) has held that opportunity of post decisional hearing does not subserve the rules of natural justice. The authority who embarks upon a post-decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity.

18. Thus, considering the above referred observations made by the Hon'ble Supreme Court of India, findings recorded by the learned District Judge-1, Nagpur holding that the post decisional hearing in this case is a compliance of principle of natural justice is erroneous and contrary to law. Thus, I am of the opinion that only option left is to remand the matter to the Commissioner, Nagpur Municipal Corporation, Nagpur to comply with the provisions of Section 81-B(2) of the Corporation Act, 1949 and decided the matter afresh after giving opportunity to the petitioner. Accordingly, I pass the following order.

- i. Writ petition is allowed.
- ii. The judgment and order dated 3rd September, 2022 passed by the Adhoc District Judge-1, Nagpur in Misc. Civil Appeal No. 103 of 2013 is hereby quashed and set aside.
- iii. The matter is remanded back to the Commissioner, Nagpur Municipal Corporation, Nagpur to take the decision afresh after necessary compliance under Section 81 of the Corporation Act, 1949.

iv. If the petitioner makes any application for renewal of lease, the Commissioner, Nagpur Municipal Corporation, Nagpur is at liberty to decide the same in accordance with law.

[ANIL S. KILOR, J.]