

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SATISH
RAMCHANDRA
SANGAR

WRIT PETITION NO.14450 OF 2024

Digitally signed by
SATISH RAMCHANDRA
SANGAR
Date: 2024.11.19
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Shreemangal Enterprises

(A Proprietorship) Through:-

Tarachand Devishay Gupta,

Age : 68 Years, Occupation : Business,

Resident of : Jaipur House, 24,

Parjat Nagar, Taluka and District : Nashik

...Petitioner

(Original Plaintiff)

Versus

1. **Pramod Eknath Wankhedkar**

Age : 63 Years, Occupation : Retired,

Resident of : Saraswati Nagar, Near Bali

Temple, Plot No.44, Survey No.242/2/1/3,

Samprawa, Nashik, Maharashtra : 422 003.

2. **Rajan Shantilal Lodha**

Age : 55 Years, Occupation : Retired,

Resident of : Plot No.4 and 5, Survey No.252/1,

Saraswati Mandir Road and Bali Mandir

Premises, Nashik.

3. **Mahendra Keshav Patil**

Age : 41 Years, Occupation : Business,

Resident of : Plot No.2, Survey No.52/2/3,

Saraswati Mandir Road and Bali Mandir

Premises, Nashik, Maharashtra : 422 003;

At present:-

Plot No.2, Keshavanand Bungalow,

Shanti Nagar, Hirawadi, Panchavati,

Siddhivanayak Temple, Nashik.

4. **Chandrashekhar Kalu Patil**

Age : 48 Years, Occupation : Business,

Resident of : Om Bungalow, Plot No.10,

Saraswati Mandir Road and Bali Mandir
Complex, Panchavati, Nashik.

5. **Sachin Premchand Kothari**

Age : 42 Years, Occupation : Business,
Resident of : Kothari Plaza, Plot No.1,
Mumbai-Agra Highway, Near Bali Temple,
Saraswati Temple Road, Nashik, Panchavati,
Maharashtra : 422 003.

6. **Kailas Shankarrao Holkar**

Age : 56 Years, Occupation : Service,
Resident of : Srihari, Plot No.12,
Saraswati Mandir Road, Behind Kothari
Plaza, Hanuman Nagar, Panchavati,
Nashik – 2.

7. **The Commissioner**

Nashik Municipal Corporation,
Nashik.

8. **The Executive Engineer**

Town Planning Department,
Nashik Municipal Corporation,
Sharanpur Road, Taluka and District :
Nashik.

...Respondents
(Original Defendants)

Mr.Shrishailya S. Deshmukh i/b. Mr.Nimish S. Parakh:-	Advocate for Petitioner.
Mr.Anup Lahoti:-	Advocate for Respondent Nos.1 to 6.

CORAM : S. M. MODAK, J.

DATE : 22nd OCTOBER 2024

P. C. :-

1. Heard learned Advocate for the Petitioner and learned Advocate for Respondent Nos.1 to 6 – Defendant Nos.3 to 8.
2. The Defendant Nos.1 and 2 are served by private notice and an acknowledgment is produced. So also, they are served of today's circulation. Its photo copies are taken on record. Marked Annexure-X.
3. Even though, there is a prayer for setting aside the common judgment dated 15th July 2024 (Page Nos.16-34) passed by the Appellate Court and the two orders passed below Exhibit-5 (Page Nos.35-39) and Exhibit-30 (Page Nos.40-49) dated 18th December 2023, learned Advocate for the Petitioner only pressed granting of relief in terms of prayer clause (b). It says about *issuing directions to Defendant No.1 to decide the objections raised by the Defendant Nos.3 to 8. (wrongly typed as Defendant Nos.1 to 6) within one (1) month period.*
4. The Plaint is on Page No.76. My attention is also invited to the “*stop work notice*” dated 28th June 2022 (Page No.57) issued by the Town Planning Department–Nashik Municipal Corporation. The Plaintiff was asked not to continue with the construction until further decision is taken. It also mentions about issuance of building permission dated 16th April 2007. It also mentions about the hearing

taken place on 16th December 2010 by the Municipal Commissioner on the basis of objections taken by the residents.

5. By way of Suit, the Plaintiff has challenged the “*stop work notice*” dated 28th June 2022. During pendency of Suit, a temporary injunction was sought. It was rejected by the trial Court and by the Appellate Court.

6. It is true that “*stop work notice*” prohibits the Plaintiff from continuing the work till the time, further decision is taken. It is contended that up till now, no further decision is taken by the Corporation. That is also not pleaded in the Written Statement / Reply filed before the trial Court. It is contended that all the orders passed by the trial Court and the Appellate Court even do not mention about the final decision taken by the Corporation. The contention is, let a direction be given to Defendant No.1 – Nashik Municipal Corporation through the Commissioner to take a final decision on the objections taken by the residents on 27th June 2022¹. If, this direction is given, learned Advocate on instructions undertakes to withdraw the Suit and also undertakes not to carry out the remaining construction on the basis of building permission.

1 Replaced

7. I think, this is a fair submission. If it is accepted, the Suit will be disposed of. Even, liberty can be granted to the Petitioner to challenge that decision, if it goes against him. Hence, following order is passed:-

ORDER

- (i) The Defendant No.1–Nashik Municipal Corporation through the Commissioner is directed to decide the objections taken by the residents on **27th June 2022²** (Defendants in stop work notice) as early as possible not later than three (3) months.
- (ii) The Commissioner may decide it on his own or through his nominee.
- (iii) The Officer to go through the documents and to hear the Plaintiff as well as the Defendant Nos.3 to 8 and to take an appropriate decision.
- (iv) These directions are given on the undertaking that the Suit will be withdrawn within a period of two (2) weeks from today.
- (v) The undertaking given that the Plaintiff will not carry out further construction on the basis of building permission dated 16th April 2007 and further permission dated 31st March 2022 is accepted as an undertaking given to the Court.
- (vi) The Petitioner is granted a liberty to challenge the decision taken before the appropriate forum if it goes against him.

2 Replaced

- (vii) The decision be taken within three (3) months from the date of producing an authenticated copy of this order by the Petitioner to the Commissioner.
 - (viii) It is made clear that the Officer will decide the objection independently and this Court has not passed any observations on merit.
8. In view of the above, **Writ Petition stands disposed of.**

[S. M. MODAK, J.]