

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

WRIT PETITION NO. 5700 OF 2024

(Yogesh s/o Harshadrai Lathiya and others vs. Municipal Corporation of City of Chandrapur
and others)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Mr. M.P.Khajanchi, Advocate for petitioners.
Mr. M.I.Dhatrak, Advocate for respondent No.1.
Mr. M.Anilkumar, Advocate for respondent Nos.2 to 6.

CORAM : BHARATI DANGRE AND ABHAY J. MANTRI, JJ.

DATE : OCTOBER 07, 2024

1) In the backdrop of the factual scenario which is placed before us, we have noticed that the respondent Nos.2 to 5, the landlords, have instituted suit in the Court of Civil Judge, Senior Division, Chandrapur for eviction and for obtaining the premises which are presently in occupation of the petitioners.

It is the specific contention of learned Counsel Mr.Khajanchi, representing the petitioners that the pleadings in the civil suit, do not even refer to the dilapidated state of the building and rather, one of the grounds for eviction, is bona fide use of the building, for housing the dental clinic of his son.

2) On 26/09/2022, the Municipal Corporation issued a notice to the Landlord under Section 264 of the Maharashtra Municipal Corporation Act, 1949, on the premise that the subject structure is 70 years old and it is in dilapidated condition and because of the rainy season, it has become weak and may collapse any time.

The notice called upon the landlord/owner to demolish the structure or if they desire, they may strengthen the said structure, so that its safety can be ensured upon carrying the necessary repairs and a certificate from the structural Engineer, shall be submitted.

3) The aforesaid act on the part of the Municipal Corporation prompted the petitioners to approach this Court by filing a Writ Petition and on 03/10/2022, when, an ad interim relief was granted staying the effect and operation of the impugned notice.

The petition was disposed off on 21/08/2023, by permitting the petitioners, the tenant to take appropriate measures as indicated in the notice, to the satisfaction of the Commissioner.

4) According to Mr.Khajanchi, the necessary repairs are carried out and on 02/04/2024 he has obtained Structural Stability Inspection Report from the Civil, Structural and Chartered Engineer situated in Chandrapur, who has clearly opined as under :-

“9. The structural examination carried out reveals that –

Though the subject building is very old almost attain its full life. All the structural and super structural component are in good conditions, floor, roof and its components are not critically damaged. The over all condition of subject building is quite safe and sound and can sustain few more years with some periodic maintenance.

Some relevant Photographs of the subject building, its components etc. are appended here with. The said Photographs are self explanatory.”

5) On 12/04/2024, the petitioner addressed a communication to the respondent No.1 pointing out the compliance of the notice dated 27/09/2022 and that he is armed with the certificate indicating the stability of the building and it is open for the Corporation to have an inspection of the building in assessing stability certificate and it should be construed that a compliance of the notice has been undertaken by the petitioners.

6) It is in the backdrop of these circumstances, when we called upon the Corporation as to on what basis it has started demolition, learned Counsel Mr.Dhatrak, appearing for Municipal Corporation would rely upon the notice dated 14/03/2024, which indicated that the building has become dilapidated and some portion it may collapse, in the ensuing rainy season.

When we asked Mr.Dhatrak, as to whether Corporation has taken into consideration this certificate possessed by the petitioners and whether it has carried out inspection of the building, he submits that the inspection was carried out before and he is not averse to the suggestion that the Authorities of the respondent Corporation, shall carry out fresh inspection of the building and obtain the necessary certification from the authorized panel, appointed by the Corporation for this purpose.

Needless to state that the Corporation shall give an opportunity to the petitioners to produce all the necessary documents, apart from the fact that when the team visit building, an advance intimation shall be given to the petitioners to secure their presence.

7) Continuing interim order dated 25/09/2024, we direct the exercise to be taken out by the respondent Corporation within a period of four weeks from today.

8) We expect the Corporation to submit its report before us on reopening of the Courts after Diwali Vacation and we direct the listing of the petition on **21/11/2024**.

(**ABHAY J. MANTRI, J.)**

(**BHARATI DANGRE, J.)**

KOLHE