



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

WRIT PETITION NO.1038 OF 2025

Shivshankar S/o Shankarlal Joshi
Prashant Nagar, Ajni, Nagpur
and anr.

... Petitioners

-vs-

State of Maharashtra, Thr. Secretary
Urban Development Dept. Mantralaya, ... Respondent
Mumbai and ors.

... Respondents

Shri A. V. Pande, Advocate for petitioners.
Shri S. M. Ukey, Additional Government Pleader for respondent No.1.
Shri J. B. Kasat, Advocate for respondent No.2/NMC.

CORAM : ALOK ARADHE, CJ. AND
AVINASH G. GHAROTE, J.

DATE : FEBRUARY 26, 2025

ORAL ORDER (PER : CHIEF JUSTICE) :

1. Heard.
2. **Rule.** Rule made returnable forthwith with consent of counsel for the parties.
3. In this writ petition, the petitioners inter alia seek to quash and set aside the notice dated 22/01/2025 issued by the Nagpur Municipal Corporation under Section 53(1) of the Maharashtra Regional & Town Planning Act, 1966 (hereinafter referred to as 'the MRTP Act').

The facts giving rise to filing of this writ petition in nutshell are that the petitioners are tenants in respect of first and second floor of the building situate on plot No.7, Harwe Sabhapati layout, Ghat road, opposite Vijay

talkies, Nagpur. Admittedly the petitioners are in occupation of the aforesaid premises as tenants.

4. The Assistant Commissioner, Nagpur Municipal Corporation issued a notice dated 22/01/2025 under Section 53(1) of the MRTP Act directing demolition of the unauthorised construction of the building for lack of building permission under the MRTP Act. The petitioners who are tenants in respect of the aforesaid premises has assailed the validity of the said notice in this writ petition.

5. Shri A. V. Pande, learned counsel for the petitioners submits that the impugned notice dated 22/01/2025 has been issued in excess of jurisdiction and has been passed without affording any opportunity of hearing to the petitioners. It is submitted that the impugned notice is arbitrary, in excess of jurisdiction conferred on the Authority under the MRTP Act and therefore the same is liable to be quashed and set aside.

6. On the other hand, Shri J. B. Kasat, learned counsel for respondent No.2-NMC appearing on advance notice submits that the petitioners who are tenants of the structure which has been made without any building permission cannot challenge the notice issued under Sections 52 and 53 of the MRTP Act and it is only the landlord who can challenge such notice. It is therefore submitted that the writ petition is liable to be dismissed.

In support of his submissions, reference has been made to an order

dated 22/01/2025 passed by Division Bench of this Court at Principal Seat in Writ Petition No.13254/2022 (*Vivek Krishna Dode vs. State of Maharashtra and ors.*).

7. By way of re-joinder reply, learned counsel for the petitioners submits that the aforesaid order passed by the Division Bench of this Court only contains conclusion and not the reasons and therefore same is not a binding precedent. It is further submitted that the petitioners are occupiers of the building in question and therefore they are entitled to challenge the impugned notice.

8. We have considered the rival submissions made by both sides and we have perused the record.

The MRTP Act is enacted with an object to provide for planning, development, control of the use of land and to confer on public authorities powers in respect of the acquisition and development of land for planning and other purposes etc.

Section 2(17) of the Act defines the expression “occupier” to include a tenant, an owner in occupation of, or otherwise using his land, a rent-free tenant in any land, and any person in lawful possession of any land who is liable to pay to the owner compensation for the use and occupation of the land.

Section 53 of the Act deals with power to require removal of unauthorised development. The relevant extract of Section 53 is reproduced extracted below :

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.

1(A) 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 or 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.

9. Thus, it is evident that the aforesaid provision of Section 53(1)(a) empowers the authority to 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.

Section 53(1)(b) provides that 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.

Section 53(3) enables 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.

10. It is well settled law that on mere demolition of a building, the judicial relationship between the landlord and tenant does not come to an end and right of the tenant is not extinguished. (See : ***Shaha Ratansi Khimji and sons vs. Kumbhar Sons Hotel Private Limited and ors. (2014 14 SCC 1)*** and ***Anandrao G. Pawar vs. Municipal Corporation of Greater Mumbai and Others. 2023 SCC OnLine Bom 2534.***).

11. In the instant case, the petitioners are admittedly tenants in respect of the building. The owner of the building has not come forward to state that he has raised the construction of the building after obtaining sanction from the

Authority of Nagpur Municipal Corporation. Section 53 of the MRTP Act does not enable the tenants in occupation of a building which has been illegally erected to stay in the building. The tenant's/lessee's right is only against his landlord and he does not have any right *qua* the local body/Municipal Corporation to insist that he should continue to stay in the building which has been illegally raised. The provisions of the MRTP Act do not confer any right on a tenant who is in occupation of the premises in building which has been illegally raised. Therefore, in our considered opinion, a tenant in a structure does not have any locus to challenge the notice issued by the Authority under Section 53 of the MRTP Act.

12. In view of preceding analysis, it is held that the writ petition filed by the petitioners who admittedly are tenants of the premises in question, is not maintainable. Therefore, we are not inclined to entertain the same. However, liberty is reserved to the petitioners to take recourse to such remedy as may be available to them in law with regard to their grievance.

With aforesaid liberty, the writ petition is disposed of.

(AVINASH G. GHAROTE, J.)

(CHIEF JUSTICE)