



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

Writ Petition No. 2414 of 2025

[Shri Kailashchandra s/o Ramkumar Tharad through his P.O.A. holder,
Subhash s/o Kailashchandra Tharad (Agrawal) ..vs.. Municipal Council
Gondia through its Chief Officer, Gondia and anr.]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. M. P Khajanchi, Advocate for the petitioner
Mr. M. I. Dhatri, Advocate for respondent no. 1
Mr. A. A. Bansod, Advocate for respondent no. 2

CORAM : ANIL L. PANSARE J.

DATED : 05-05-2025

Heard.

2. The petitioner filed a suit for declaration and injunction because respondent no. 1 issued notice to demolish dilapidated building. The respondent no. 2 is landlord. According to him, the structure is 75 years old and is indeed dilapidated.

3. Respondent no. 1 appears to have placed on record the report given by two Engineers viz. Dr. Gadve and Dr. Vyavahare of Visvesvaraya National Institute of Technology (VNIT), Nagpur. According to them, the building is in dilapidated condition.

4. In context with above, the petitioner had filed application under Order 26 Rule 9 of the Code of Civil Procedure, 1908 requesting inspection by the commission. The said application was rejected. The order was challenged before this Court in Writ Petition No. 2223/2024. Interim relief was granted vide order dated 8-4-2024 on the ground that respondent no. 1 may demolish the building where the petitioner is running a lodge. The petition came to be disposed of vide order dated 2-12-2024 permitting petitioner to

challenge the report of condition of building given by VNIT, Nagpur by cross-examining either Dr. Gadve or Dr. Vyavahare, who will be examined by the respondents.

5. Since the Interim relief was not continued, the petitioner approached the trial Court by filing application, Exhibit 29 seeking order of status quo. The application has been rejected on the ground that this Court has not extended the interim relief.

6. It is worth mentioning here that the petitioner has filed suit for declaration and injunction. As regards injunction, the prayer is that respondent no. 1 should be restrained from demolishing the suit structure on the ground that structure is not dilapidated. The argument is that if the status quo is not maintained particularly when this Court has granted interim relief pending writ petition, the purpose of filing suit itself will be defeated.

7. To my mind, the trial Court committed an error by rejecting the request only on the count that this Court has not extended interim relief. What the trial Court ought to have done is that it should have gone through the material placed before it, to give a *prima facie* opinion as to whether the building is in dilapidated condition and even if, it is so, should the order of status quo be granted. It appears that the trial Court has relied upon the report submitted by VNIT to opine that the condition of building is dilapidated. The trial Court, before relying on the report, ought to have permitted petitioner to cross-examine the engineers, who has reported such status and till the time, the witness has been examined, the protection out to have been given to the petitioner.

8. Considering above, the purpose will be served, if the parties are directed to maintain status quo until the Engineer, who has submitted report is examined by respondent

no. 1 and cross-examined by the petitioner. The order on application, Exhibit 29 shall be passed by the trial Court thereafter.

9. The petition is accordingly partly allowed. Order dated 10-2-2025 passed below Exhibit 29 in Regular Civil Suit No. 27/2024 by 2nd Joint Civil Judge Junior Division, Gondia is quashed and set aside.

10. The matter is remanded back to learned 2nd Joint Civil Judge Junior Division, Gondia for consideration afresh in accordance with law and what has been stated in the body of the order.

11. Writ petition is disposed of in above terms.

(Anil L. Pansare, J.)

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