

**SUPREME COURT OF INDIA**

Kripa Mangal Karyalaya

Vs.

Nagpur Municipal Corporation

C.A.No.5577 of 2004

(Sudhansu Jyoti Mukhopadhaya and Prafulla C.Pant JJ.)

12.02.2015

**JUDGMENT**

**SUDHANSU JYOTI MUKHOPADHAYA, J.**

1. This appeal has been preferred by the appellants against the judgment and order dated 30th April, 2002 passed by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Writ Petition No.1485 of 1984. By the impugned judgment, the High Court allowed the writ petition filed by respondent nos.5 and 6 and held as follows:

(i) The building permits granted by Nagpur Municipal Corporation to the land belonging to respondent No.4-Gorakshan Sabha, a Public Trust are unauthorized and illegal and hence buildings put up pursuant to such building permits are liable to be demolished

(ii) The parties may make fresh applications seeking building permits within one month from the date of judgment in accordance with revised sanctioned development plan of 2000-2001 and the Planning Authority shall dispose of such applications within four months.

(iii) The Planning Authority shall demolish the said structures if they were found not in conformity with the revised sanctioned plan of 2000-2001.

2. The factual matrix of the case is as follows:

2.1 One Shri Dhondiba Diwadkar gifted land bearing Survey No. 471, admeasuring 18.25 acres situated at Mouza Lendhra, Tahsil, District Nagpur

to respondent No. 4 - Gorakshan Sabha, a Public Trust. The said land was on the outskirts of Town of Nagpur and with the passage of time is now within the Municipal limits of City of Nagpur.

2.2 In the year 1936, the Nagpur Improvement Trust Act (For short, '1936' Act) was enacted with a view to make provisions for the improvement and expansion of the then town of Nagpur. Under the 1936 Act a Trust namely Nagpur Improvement Trust (hereinafter referred to as 'N.I.T' for short) was constituted and N.I.T was empowered to frame various improvement schemes specified u/s 27 of the 1936 Act for any area and on such scheme being sanctioned by the State Government, the N.I.T. was to implement the scheme, if necessary by acquiring the land as contemplated under the 1936 Act.

2.3 With the gradual development of "Town of Nagpur" into the "City of Nagpur", the city of Nagpur Corporation Act, 1948 (for short, 'the Corporation Act') was enacted with a view to make special legislative provisions to consolidate and amend the law relating to the Municipal affairs of the City of Nagpur. Section 2 of the Corporation Act specifically provides that the N.I.T constituted under the 1936 Act shall in the city of Nagpur continue to exercise the powers and perform duties conferred and imposed under the 1936 Act. Section 3(5) of the Corporation Act provides that all the provisions of 1936 Act shall apply to the city of Nagpur. Section 5(10) of the Corporation Act defines "City of Nagpur" means the larger urban area specified in the notification issued under Clause (2) of Article 243(Q) of the Constitution of India. With the enactment of the Corporation Act, certain amendments to the 1936 Act were carried out. As a result of amendment to section 1(2) of the Trust Act, the jurisdiction of N.I.T. was extended to the area comprised within the limits of the city and to such other area outside these limits as the State Government may declare from time to time by notification. Section 2(m) of 1936 Act which was amended in 1952 provides that all references to anything required to be done under the 1936 Act shall include anything required to be done under the Corporation Act which the N.I.T by virtue of 1936 Act has power to enforce. Thus, both the Nagpur Municipal Corporation ('N.M.C' for short) constituted under the Corporation Act and the N.I.T constituted under the 1936 Act were entrusted with the responsibility of the orderly development of the city of Nagpur.

2.4 In the year 1966, the State Government enacted the Maharashtra Regional and Town Planning Act, 1966 ('T.P. Act' for short) inter alia, with

a view to make provisions for planning the development and use of lands in the regions established for that purpose and for the constitution of Regional Planning Boards thereof for the creation of new towns by the Development Authorities. Section 2(15) of the T.P. Act defines the local authority, to include inter alia, the N.M.C. under the Corporation Act, 1948 and the N.I.T. constituted under the 1936 Act, which, on being permitted by the State were entitled to exercise the powers of a Planning Authority under the T.P. Act for any area under its jurisdiction. Section 2(19) of the T.P. Act defines 'Planning Authority', as local authority which includes such other authorities as prescribed under the Act. Under the T.P. Act, it is obligatory on the part of the Planning Authority to survey a region and prepare an existing land-use map and prepare a draft development plan for the area within its jurisdiction in accordance with a regional plan or in such other manner as may be prescribed. Section 22 of the T.P. Act provides that a development plan shall generally indicate the manner in which the use of the land in the area of a Planning Authority shall be regulated, and also indicate the manner in which the development of a plan shall be carried out. It is further provided in Section 22 of the T.P. Act that the development plan in particular shall provide for proposals for allocating the use of land for the purposes, such as residential, industrial, commercial, agricultural, recreational and proposals for designation of land for public purpose, such as schools, colleges and other educational institutions, medical and public health institutions, markets, social welfare and cultural institutions, theatres and places for public entertainment or public assembly, museums, art galleries, religious building and Government and other public buildings as may from time to time be approved by the State Government. The T.P. Act provides for modification of the draft plan on receiving objections and suggestions from the general public. Section 31 of the T.P. Act provides for sanction to the draft development plan by the State Government and on the final development plan coming into force it is binding on the Planning Authority. Section 42 of the T.P. Act provides that on the coming into operation of any plan or plans referred to Chapter III of T.P. Act, it shall be the duty of every Planning Authority to take such steps as may be necessary to carry out the provisions of such plan or plans. Section 43 of the T.P. Act provides restriction on the development of a land after the date on which the declaration of intention to prepare a development plan for area is published in the Official Gazette. Thus, once declaration of intention to prepare draft development for any area or a notification specifying any undeveloped area as a notified area, or any area designated as a site for a new town is

published in the Official Gazette, no person shall change the use of the land or carry out any development of the land without the permission in writing of the Planning Authority except as permitted under proviso appended thereto.

2.5 By a notification dated 6th October, 1967 the State Government permitted N.I.T. to exercise the powers of a Planning Authority under section 2(15) of the T.P. Act for the entire area under its jurisdiction.

2.6 In accordance with the aforesaid provisions, the N.I.T. on 12th December, 1972 published draft development plan of the city of Nagpur and the same was published in the Government Gazette on 28th December, 1972. After considering the objections and suggestions, modifications to the draft development plan were made on 20th October, 1973 and the same were published on 17th January, 1974. Subsequently the draft development plans as further modified by the N.I.T. were forwarded to the State Government for sanction under section 30(1) of the T.P. Act on 23rd October, 1974. The State Government extended the period for sanctioning such plan and ultimately with minor modification the draft development plan was approved by the State Government. Thus, the final development plan for the city of Nagpur, as sanctioned by the State Government, came into force on 3rd June, 1976.

3. It appears that final development plan came into effect from 3rd June, 1976. Both N.M.C and N.I.T were granting development permission in their respective areas and later, Government noticed the problems created due to the existence of two sets of regulations in the Municipal Corporation Area. For the said reason, Deputy Secretary to the Government, Urban Development Department Mantralaya, Bombay, vide letter dated 1st January, 1993 intimated the Municipal Commissioner, N.M.C, Nagpur about Government decision that draft byelaws published by the N.M.C u/s 169 of the T.P. Act read with Section 115 and other sections of the Corporation Act, 1948 will not be operated and the N.M.C like N.I.T will follow the draft Development Control Rules and Building Byelaws prepared by the N.I.T as submitted to Government on 12th October, 1990 which are under scrutiny of Government until further orders. The aforesaid letter being relevant reads as follows:-

"Confidential            No.TPS 2490/1504/CR-101/UD-9

Urban Development Department

Mantralaya, Bombay-400 032.

Dated: 1st January, 1993.

To,

The Municipal Commissioner,  
Nagpur Municipal Corporation,  
Nagpur.

Sub: Regulation of Building Control Activity and  
implementation of Development Control Rules and Building  
Bye-Laws in Nagpur City.

Sir,

The Nagpur Improvement Trust (N.I.T) is a planning Authority for the city of Nagpur in terms of the Maharashtra Regional & Town Planning Act, 1956. Accordingly if prepared the development plan alongwith building regulations and Development Control Rules were approved by Government vide Notification No.:TPS 2476/478/UD-5, dated the 3rd July, 1976.

With a view to standing the I.C. rules and building Bye-laws, Government had directed all the Municipal Corporations i.e. the Planning Authorities (Nagpur Improvement Trust in this case) to undertake modification under Section 37 of the Act and follow standardized Development Control Rules and Building byelaws and has forwarded the proposal for government approval on 12th October, 1990.

2. The Nagpur Municipal Corporation (N.M.C) has framed the building Byelaws under City of Nagpur Corporation Act, 1948 which were approved by the Government vide notification No.N.M.C 5365/33770, dated the 24th June, 1965. Subsequently, the Nagpur Municipal Corporation in exercise of the powers conferred under section 159 of the Maharashtra Regional Town Planning Act, 1966 read with Section 415 and other relevant sections of the City of Nagpur Corporation Act, 1948 published draft revised byelaws. Those byelaws have been sent to Government for approval vide letter No.GAD/18/G, dated 24th February, 1987 and they are yet to be approved.

Both the Nagpur Municipal Corporation and Nagpur Improvement Trust are granting Development permission in their respective areas.

Thus there has been no uniformity in the matter of the (not eligible) There have been two sets of regulations operated in the Municipal Corporation area and has been admittedly creating certain serious problems.

3. Government has examined the matter and after careful examination is pleased to issue directions under section 154 of the Maharashtra Regional Town Planning Act, 1956 as follows:

"Pending the approval of Government for the proposal of Development Control Rules and Building Byelaws submitted by the Nagpur Improvement Trust vide its letter No.D/630, dated 12th October, 1990.

i) The draft Byelaws published by the Nagpur Municipal Corporation under section 169 of the Maharashtra Regional Town Planning Act, 1956 read with Section 115 and other sections of the City of Nagpur Corporation Act 1948 will not be operated.

ii) The Nagpur Municipal Corporation like Nagpur Improvement Trust should follow the provisions in the draft Development Control Rules and Building Byelaws prepared by the Nagpur Improvement Trust as submitted to Government on 12th October, 1990 which are under scrutiny of Government until further orders.

4. The action taken may please be intimated to government.

Yours faithfully, (C.S.Pentabalekungri) Deputy Secretary to Government"

4. Between 1973 and 1983 lands were leased to the appellants by respondent no.4 and building plans were sanctioned by the N.M.C. The N.M.C was empowered to issue NOC during the said period as evident from letter dated 15th September, 1981 written by Circle Engineer (P1), N.I.T to Shri Padmakar Joshi and brothers, Sitabuldi, Nagpur as quoted below:

"OFFICE OF THE NAGPUR IMPROVEMENT TRUST No.Sch/NOC/2017 Nagpur, dated the 15.9.1981.

To Shri Padmakar Joshi & Bros.

Sitabuldi, Nagpur.

Subject:-No Objection Certificate for Petrol Pump.

Reference:-Your application dated 29.6.1981.

With reference to above, I have to inform that the Nagpur Municipal Corporation is empowered to issue no objection certificate in conformity with proposals of Development Plan of Nagpur. You may, therefore, approach Nagpur Municipal Corporation, Nagpur in this matter.

Sd/-

Circle Engineer (P1) Nagpur Improvement Trust."

From the aforesaid letter, it is clear that inspite of draft Development Plan which was published on 25th December, 1972 followed by final Draft Plan on 3rd June, 1976, the N.I.T abdicated its authority and delegated it in favour of N.M.C by stating that N.M.C is empowered to issue NOC in conformity with proposals of Development Plan of Nagpur.

5. Respondent nos.5 and 6 preferred a Public Interest Litigation under Article 226 of the Constitution of India before the Bombay High Court Bench at Nagpur inter alia, seeking a direction to N.M.C and N.I.T to remove the structures standing on the lands owned by respondent no.4-Trust on the ground that the same are contrary to the building regulations and the development plan sanctioned by the State Government under the T.P. Act. In the said writ petition, the impugned judgment was passed on 30th April, 2002 as noticed in the opening paragraph.

6. Learned counsel for the appellants while referring to the facts, as narrated above, submitted that the writ petition was filed by respondent no.5 after inordinate delay to vent out their personal vendetta. The said writ petition cannot be termed to be Public Interest Litigation as respondent nos.5 and 6 vented out their private dispute.

7. Learned counsel for the appellants further submitted that the said writ petition was primarily filed by respondent no.5 claiming to be a member of respondent no.4- Trust and respondent no.6 a member of the locality alleging mismanagement by the said Trust in leasing lands to the appellants. Apart from the aforesaid fact the respondent nos.5 and 6 did not disclose the nature of public interest involved. A personal grudge of respondent no.5 is clear as he was claiming to be a member of the Trust which was not accepted by the Trust. It was further submitted that the writ petitioners having not approached the Court with clean hands and it being a private dispute between respondent no.5 and Trust the said writ petition was not

maintainable. It is further contended that in absence of challenge to the sanctioned layout the High Court ought not to have declared them unauthorized and illegal.

8. Learned counsel for the parties relied upon Section 2 (15) (c) (ii) (iii), Section 2(19), 20 and 154 of the T.P. Act. Reliance was also placed on final Development Plan dated 3rd June, 1976 sanctioned by the State Government. A photocopy of True copy of Resolution dated 3rd June, 1976 enclosing copy of the notification issued under the letter head of N.I.T alongwith part Development Plan of Nagpur City was also produced separately for perusal.

9. Respondent nos.5 and 6 have taken similar pleas as were taken before the High Court. Counsel for respondent no.4 also supported the case of respondent nos.5 and 6.

10. We have heard the rival contentions raised by the parties and perused the record.

11. It is not in dispute that the respondent no.4-Trust has leased the property in favour of the appellants. Respondent no.5 was claiming to be a member of the Trust and Respondent no.6 claims to be a member of the locality and as noticed above they filed the writ petition before the High Court alleging mismanagement by the Trust in leasing lands to the appellants. But what we find is that the respondent no.4-Trust is now supporting respondent nos.5 and 6.

12. The aforesaid fact clearly shows that writ petition filed by respondent nos.5 and 6 was not bona fide but it was filed only on account of personal disputes between the parties i.e. inter se between the members of the respondent no.4-Trust indirectly affecting the appellants-tenants. Respondent no.4-Trust in its reply before the High Court supported the appellants but before this Court their learned counsel supported the case of respondent nos.5 and 6.

13. There is no dispute that no such notification was issued by the State Government empowering the N.M.C to exercise the power of Planning Authority. By letter dated 1st January, 1993, the State Government asked the N.M.C to follow the draft development Rules framed by the N.I.T there being conflict between two draft Rules one drafted by the N.M.C and another by N.I.T. The State Government on 27th February, 2002 has rescinded/withdrawn the notification dated 6th October, 1967 and permitted N.M.C to exercise the powers of a Planning Authority in the area under its jurisdiction except the areas in which the N.I.T has improvement schemes as more particularly set out in the said notification. Thus,

prior to 1967 N.M.C was the authority to exercise the same power sanctioning the plan and since 27th February, 2002 the N.M.C was again empowered to sanction the plan. During the period from 1967 till 2002, though N.I.T was the Planning Authority for the city of Nagpur, it abdicated its power, delegated it in favour of N.M.C and did not sanction any building plan which is also clear from letter dated 15th September, 1981 issued by N.I.T to one Shri Padmakar Joshi & Bros., Sitabuldi, Nagpur as quoted above.

14. True copies of notification dated 3rd June, 1976 and Part Development Plan of Nagpur City have been produced wherein respondent no.4-Gorakshan Sabha has been shown within the area of public institutions and offices. In absence of original coloured plan the true copy of the plan cannot be relied upon to hold any construction illegal in view of the fact that the N.M.C which sanctioned building plan supposed to have gone through the original plan.

15. In absence of the sanctioned plan, we are of the view that the High Court was not justified in deciding the disputed question of fact as to whether the building was constructed in accordance with Town Planning Scheme. The High Court ought to have looked into the sanctioned plan to find out whether it was for office (Karyalaya) or for residential or for commercial purpose for coming to a definite conclusion. Further, there being a long delay of eight years in filing the writ petition and in absence of challenge to the plan sanctioned by N.M.C, the High Court was not justified in entertaining the so called Public Interest Litigation filed by persons who had personal dispute with respondent no.4.

16. For the reasons aforesaid, we set aside the impugned judgment and order dated 30th April, 2002 passed by the High Court of judicature at Bombay, Nagpur Bench in Writ Petition No.1485 of 1984 and dismiss the Writ Petition preferred by respondent nos.5 and 6. The appeal is allowed but there shall be no orders as to cost.