

**(2002) 02 BOM CK 0118**

**Bombay High Court (Nagpur Bench)**

**Case No:** Writ Petition No"s. 1119 of 1996 and 1909 of 1997

Vinayak Wasudeo Upadeo and  
Another

APPELLANT

Vs

City of Nagpur Corporation and  
Others

RESPONDENT

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**Date of Decision:** Feb. 25, 2002

**Acts Referred:**

- Constitution of India, 1950 - Article 21, 226

**Citation:** (2002) 4 BomCR 196 : (2002) 4 BOMLR 196 : (2002) 3 MhLj 210

**Hon'ble Judges:** V.M. Kanade, J; V.G. Palshikar, J

**Bench:** Division Bench

**Advocate:** Party in person in W.P. Nos. 1119 of 1996 and 1909 of 1997, for the Appellant; C.S. Kaptan, For respondent No. 1, B.N. Mohta and Z.A. Haq for respondent No. 2 in W.P. No. 1119 of 1996, Bharti Dangre, Asstt. Govt. Pleader For respondent No. 3 in W.P. No. 119 of 1996, A.S. Chandurkar, in W.P. No. 1119 of 1996, Bharti Dangre, Asstt. Govt. Pleader For respondent No. 2 in W.P. No. 1909 of 1997, Z.A. Haq, in W.P. No. 1909 of 1997, S.V. Akolkar, For respondent No. 4(a) and (b) in W.P. No. 1909 of 1997 and S.S. Sharma, in W.P. No. 1909 of 1997, for the Respondent

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### **Judgement**

V.G. Palshikar, J.

The petitioners in both the petitions are same. The prayers are almost identical and, therefore, the petitions have been heard together and can be conveniently disposed of by common order.

2. The petitioners are residents of Vinayak Apartments situated in Dhantoli area, near Lokmat Square, Nagpur City. Main grievance of the petitioners is that their fundamental right of leading peaceful and full life as contemplated by Article 21 of the Constitution of India, is seriously and continuously infringed by the respondents who have, according to the petitioners, commercialised the residential area and the apartments in which the petitioners are residing. According to the petitioners, this is

an illegality, resulting in infringement of their fundamental rights and, therefore, appropriate writs under Article 226 of the Constitution are liable to issue.

3. It would be better to note prayers in Writ Petition No. 1119 of 1996 in extenso.

"(a). issue a suitable writ, order or direction against the respondent No. 1 directing it to take effective measures so as to prevent the establishment of Nursing Home and Clinic in the Vinayak Apartments, Lokmat Square, Nagpur and do all acts necessary for preventing commercial being taken up in the residential premises;

(a-1). issue a suitable writ, order or direction against the respondent No. 1 quashing certificate of Registration granted by the Corporation to the respondent No. 2 dated 23-5-1996 (Annexure -E);

(b). issue a suitable writ, order or direction interim directing the respondent No. 1 to see that no commercial activity or nursing home is started by the respondent No. 2 in residential apartments 1 and 2 of Vinayak Apartments, Lokmat Square, Nagpur during the pendency of the present petition;

(b-1). issue suitable writ, order or direction interim staying the effect and operation of the registration certificate (Annexure E) during the pendency of present petition;

(c). issue a suitable writ, order or direction interim restraining the respondents 1 and 2 from starting any commercial activity and nursing home in the Vinayak Apartments, Lokmat Square, Dhantoli, Nagpur during the pendency of present petition and restraining the respondent No. 2 from sanctioning any commercial activity during the pendency of present petition;

(g). grant any other relief deemed fit in the facts and circumstances of the case."

To a great extent, prayers in other writ petition are very similar or akin to the prayers made in the aforesaid petition. Prayers in Writ Petition No. 1909 of 97 read as under:--

"(1) issue a suitable writ, order or direction, directing the respondent No. 1 to take effective measures promptly so as to stop all commercial activities, being carried out by the respondents No. 3 to 5 in Vinayak Apartment, Lokmat Square, Nagpur and do all things necessary for securing the health, hygiene, peace, tranquility of the petitioner and the residential owners of the Vinayak Apartment.

(2) Issue a suitable writ, order or direction interim directing the Corporation to take immediate measures to stop the commercial activities of the respondents 3 to 5 in Vinayak Apartments during the pendency of the petition;

(3) Grant any other relief deemed fit."

4. The scrutiny of the prayers would, therefore, show that the petitioners are praying for appropriate directions to the respondent Corporation or the State Authorities to act in accordance with law and seeking to quash the Certificates of

Registration granted to the concerned respondents-hospitals/dispensaries so that commercialisation of the residential premises is prevented. Other ancillary reliefs are also sought.

5. The petitions are strongly opposed by all concerned respondents. They have denied the allegations made by petitioners and have made counter allegations that the petitioners are harassing them and the petitioners are termed as blackmailers. It is alleged that the petitioners are trying to prevent them from exercising their fundamental right to carry on trade, business, vocation or profession. They have contended that the practice of medical profession by running clinics, hospitals, nursing homes, dispensaries apart from being fundamental right of the respondents, it is an activity vitally important and necessary for the society at large and if it is considered to be a purely commercial activity and therefore removed from residential localities, it will cause irreparable loss to a large number of people who may not be able to easily reach the commercial centres where such activities are sought to be located and may in genuine cases be deprived of medical aid in time. It was, therefore, submitted on behalf of the respondents that services rendered by medical practitioners are essential for proper and healthy maintenance of the society and activity carried by them cannot be branded as commercial activity. In any event, if it is assumed to be a commercial activity, fact remains that it is essential and predominantly beneficial to the society. In fact, it is meant for betterment of health conditions of people who constitute the society. Whether commercial or otherwise, therefore, the activity cannot be banned because of extra-sensitive citizens like the petitioners. It is stated that even if some inconvenience is caused to few individuals like the petitioners, the convenience and advantages derived by the citizens of Nagpur, outsiders in general and people from Dhantoli area in particular from these hospitals, dispensaries, clinics, laboratories, nursing homes are far superior and substantially outweighs the trifle and insignificant inconvenience caused to the petitioners. They, therefore, pray that the petitions are liable to be dismissed as it is not in public interest, but it is for vindication of vindictive attitude of the petitioners.

6. We do not doubt the sincere ness and seriousness with which the petitions have been canvassed before us. The petitioners do not have any grudge whatsoever against any of the medical practitioners in Dhantoli area barring those in Vinayak Apartments where the petitioners are living. The grievances of the petitioners, as disclosed by the petitioner No. 2 while arguing in person, apparently are genuine and it is possible that they are seriously hampered in living in that apartment scheme. But, this is a case where we have to assess comparative hardship. We will, therefore, proceed on the assumption that certain hardships are faced continuously by the petitioners. The question which crops up, therefore, is as to whether for such rights or rights of individuals, the entire locality should be subjected to suffer by directing removal of such nursing homes etc., treating them as Commercial activity, on the omnibus ground that commercial activity in residential area is prohibited.

Should all residents of Dhantoli area, which is predominantly a residential area, be made to suffer by removing all Nursing Homes, Clinics, Laboratories, Hospitals etc. from that area and thereby subject them to suffer seriously and adversely in getting prompt medical treatment. In short, it is a question of comparative discomfort which the petitioners have to suffer as it would be definitely negligible than the one which would be suffered by the residents of Dhantoli area in particular and other large number of needy people in case the removal of nursing homes, dispensaries, hospitals, laboratories, clinics etc.

7. We have given serious consideration to the allegations as made by the petitioners and inconveniences as put forward by the respondents. The respondents have demonstrated before us that there has not been any illegal sanction or grant of Registration by the Corporation of City of Nagpur. There is no illegality in commencing Nursing homes, clinics etc. or the commercial activity, as it is called by the petitioners, in the residential areas. The petitioners, according to the respondents, have failed to prove any statutory requirement in existence and to show the breach thereof on the part of respondents requiring issuance of the writs as claimed by petitioners. Even if it is true that there may not be any such statutory right in the individuals like the petitioners, the provisions in the City of Nagpur Corporation Act, the Byelaws framed for building and construction activities thereunder; the requirements of Master Plan under the Maharashtra Regional Town Planning Act; the provisions of the Nagpur Improvement Trust Act and all other enabling provisions do create a duty in the Nagpur Municipal Corporation as also the other Civic Authorities in the city to see that the construction activity in the city is developed as planned by the State and the provisions of law as promulgated from time to time either by way of Acts, Rules, Notifications or Bye-laws are scrupulously followed by the Authorities enjoined with the duty to do so. In our opinion, what is claimed by the petitioners in this case is a scrupulous adherence to the requirements of law pertaining to use of buildings, apartments etc. by the respondents. In our opinion, there cannot be any dispute on the proposition of law that construction activity or taking up user of any property, is permissible in accordance with law. If the activity is undertaken in violation of law, it is the duty of the Corporation, the Nagpur Improvement Trust and all other Civic Authorities, as the case may be, to prevent such infraction of law.

8. We are at the same time confident that by and large in majority of cases, the Nagpur Municipal Corporation and the Nagpur Improvement Trust or the concerned Authorities are functioning properly and are carrying out their duties to their utmost capacity. Again, infraction in execution of their duties may be justiciable individually, but it cannot be a ground for issuing general fiat requiring them to follow provisions of law when there is no evidence before the Court that the infraction is the rule, provisions of law are flouted more than obeyed requiring issuance of such fiat. In our opinion, these petitions can be disposed of by directing the respondents to do the following :--

(1) Examine the commencement of Nursing Homes, Clinics, Dispensaries, Hospitals, Laboratories etc. in the Dhantoli and Ramdaspath area of Nagpur City and ensure that none of them is misusing permissions granted to them.

(2) That, all these establishments have a valid permission from the requisite Authorities.

(3) That, they maintain high standards of hygiene and scrupulously keep clean the locality in which they are situated. They be directed to take care that the dirty disposals and useless material thrown by the said establishments and other institutions similarly situated are properly incinerated or at least kept in covered receptacles and destroyed effectively at the earliest. Necessary steps may be required to be taken by these institutions by the Authorities like the Corporation.

We hope that if these directions are followed hereafter, there may not be grievance of the kind made by the petitioners and even the grievances expressed by the petitioners would stand redressed to a great extent. With these observations, petitions are disposed of.