

Neutral Citation No. - 2025:AHC:103497-DB

A.F.R.

Court No. - 40

Case :- WRIT - C No. - 6490 of 2025

Petitioner :- Ashok Kumar Gupta

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Dhananjai Rai, Vibhu Rai

Counsel for Respondent :- C.S.C., Pushpendra Kumar, Ramdhan, Vibhanshu Vaibhav

Hon'ble Ashwani Kumar Mishra, J.

Hon'ble Jayant Banerji, J.

1. Heard learned counsel for the petitioner, learned Standing Counsel for the State-respondents and Shri Vibhanshu Vaibhav, learned counsel representing the Nagar Nigam, Aligarh as well as the learned counsel for the applicants seeking impleadment of the intervenors.

2. This writ petition has been filed with a prayer to issue an appropriate direction to the District Magistrate, Aligarh and Senior Superintendent of Police, Aligarh to provide necessary police force to the petitioner to get the building demolished in compliance of the notice issued by Nagar Nigam, Aligarh dated 1.10.2024 under Section 331(1) of the U.P. Municipal Corporation Act, 1959¹. The petitioner has made further prayer to command the officials of the Nagar Nigam and District Administration to get the building demolished, bearing Municipal No.2/206 at Sudama Puri, Ram Ghat Road, Aligarh, which is popularly known as 'Rama Devi Building'.

3. The petitioner claims to be the owner of the premises in question. In paragraph 6 of the writ petition, it is claimed that the building is nearly 100 years old and is in dilapidated condition. According to petitioner, the building in question is such that neither its

¹ Act, 1959

maintenance is possible nor is it possible to be repaired inasmuch as any attempt at its renovation might result in collapse of the building itself. In paragraph 10 of the writ petition, it is claimed that on being apprised by one Mahesh Chandra Saxena, certain reports were called for by the authorities of Nagar Nigam, Aligarh. The building was inspected by the officials of the Nagar Nigam and it was found that the structures are in dilapidated stage and will require demolition. The authorities are said to have found the building such that its collapse is quite imminent which may result in loss of life and property.

4. Records of the writ petition reveal that various proceedings were undertaken for the building to be demolished, but no action was taken. Taking cognizance of the grievance raised in the present petition, this Court passed the following order dated 29.5.2025 :-

“In the present petition, it has been stated that despite an order under Section 331(3) and despite the inability of the petitioner who claims himself to be the power of attorney holder of the original owner of the property to demolish the building, no steps have been taken by the Municipal Commissioner and the Nagar Nigam, Aligarh to execute the notice issued under Section 331 of the Uttar Pradesh Municipal Corporation Act, 1959.

The Municipal Commissioner, Nagar Nigam, Aligarh shall file his personal affidavit on the next date fixed in which he shall give the details of the facts and materials which persuaded the Nagar Nigam to issue notice under Section 331 of the Act, 1959 and further the circumstances which prevented the Nigam from ensuring the execution of notice. The Municipal Commissioner, Nagar Nigam, Aligarh shall also be personally present in the Court on the next date fixed.

Put up again as fresh on 3rd July, 2025.

The impleadment application filed by the occupiers of the building shall be considered on the next date.

It is clarified that till the next date, no action shall be taken either by the Nagar Nigam or the petitioner or any other person in pursuance to the notice issued under Section 331.

A copy of this order shall be sent to the Municipal Commissioner, Nagar Nigam, Aligarh by the Registrar (Compliance) within 24 hours.”

5. Pursuant to the aforesaid order, Shri Vibhanshu Vaibhav representing the Nagar Nigam, Aligarh has filed a personal affidavit of Municipal Commissioner, Nagar Nigam, Aligarh. The Municipal Commissioner is also present before us.

6. The Municipal Commissioner, in his personal affidavit, has clearly stated that attempts were made to demolish the dilapidated building but on account of various resistance made by 44 alleged tenants and their family members, the demolition could not be carried out. Stand of the Municipal Commissioner as is contained in paragraphs 9 to 11 of the affidavit reads as under :-

“9. That with profound respect, it is also noteworthy to mention here that in furtherance of the Notice dated 01-10-2024, the Superintendent of Police (City) have sent a letter no. st-spcity-06/2025 dated 18-05-2025 to the Additional Municipal Commissioner, Nagar Nigam, Aligarh stating therein to depute the competent official to be present on the spot in question at the time of further proceeding. In that regard, the Additional Municipal Commissioner, Nagar Nigam, Aligarh through his letter no. 37/s.t./na.ni.ali/2025-26 dated 19-05-2025 have deputed one Sri Shiftey Haider, Assistant Engineer (Civil) to be present on the spot in question for the purpose of further proceedings in furtherance of the notice dated 01-10-2024. For ready reference to this Hon'ble Court, a correct copy of the letter no. st-spcity-06/2025 dated 18-05-2025 sent by the Superintendent of Police (City) to the Additional Municipal Commissioner, Nagar Nigam, Aligarh and letter no. 37/s.t./na.ni.ali/2025-26 dated 19-05-2025 issued by the Additional Municipal Commissioner, Nagar Nigam, Aligarh to Sri Shiftey Haider, Assistant Engineer (Civil), Nagar Nigam, Aligarh are being filed herewith collectively and marked as Annexure No. 5 to this affidavit.

10. That it is highly significant to mention here that in furtherance of the Notice dated 01-10-2024, the Assistant Engineer and Junior Engineer, Nagar Nigam, Aligarh proceeded in the matter and went to the spot in question on 28-05-2025 but there was massive protest raised by the 44 tenants and their family members resulting which, the violent and intense situation have been created. It is also intimated by the officials of the Nagar Nigam to the tenants to pull down the

dilapidated structure of the building by their own otherwise the Nagar Nigam of their own resources would demolish the said building. In that regard, a departmental report dated 28-05-2025 has been submitted. It is humbly submitted that another notice no. 3598/ni.vi./na.ni.ali./2024-25 dated 28-05-2025 have been issued mentioning therein with direction to the tenants to demolish or renovate the dilapidated structure which is shown as orange colour in the map appended with the notice but the tenants have refused to accept the said notice. It is further submitted that on account of the massive and huge protest by the tenants and their family members, the officials of the Nagar Nigam was also unable to affixed/chaspa the said notice upon the said building. For ready reference to this Hon'ble Court, a correct copy of the report dated 28-05-2025 submitted by the Assistant Engineer and Junior Engineer, Nagar Nigam, Aligarh and the notice no. 3598/ni.vi./na.ni.ali./2024-25 dated 28-05-2025 issued by the Nagar Nigam, Aligarh are being filed herewith collectively and marked as Annexure No. 6 to this affidavit.

11. That bare perusal of the aforesaid facts and circumstances, it is respectfully submitted that despite of adequate efforts by district administration, police department and nagar nigam in as much as the massive protest raised by the 44 tenants and their family members of the said building, the answering respondent could not be able to proceed in the matter effectively which prevented the nagar nigam from ensuring the execution of the notice dated 01-10-2024. For ready reference to this Hon'ble Court, a correct copies of the cutting of newspapers reflecting the massive protest raised by the 44 tenants and their family members of the said building is being filed herewith and marked as Annexure No. 7 to this affidavit.”

7. The Municipal Commissioner has also informed the Court that he himself has inspected the premises in question and found the said building to be in dilapidated condition. The Municipal Commissioner has also expressed serious apprehension with regard to possible loss of life in the event any unfortunate incident occurs during the upcoming monsoon season. He has also stated that the authorities of Nagar Nigam are conscious of their obligation under the Act, 1959 and are

making all endeavours to ensure that the building is demolished so that life and property of residents and nearby persons is safeguarded.

8. During course of hearing of the present matter, Shri Pushpendra Kumar and Shri Ram Dhan, Advocates, appeared on behalf of 23 persons alongwith an application for their impleadment. Learned counsel representing the proposed applicants contended that these tenants are in occupation on part of the premises since long and that their interest be protected. The Court had called upon the counsel for the applicants, who have moved the application, to apprise the Court as to what rights would be available to the tenants in such eventuality where the tenanted premises is found to be in dilapidated condition and requires demolition.

9. In order to enable the learned counsel to apprise the Court of the aforesaid query, we deferred the matter for some time.

10. We have examined the provisions of the U.P. Regulation of Urban Premises Tenancy Act, 2021² so as to ensure that the right available to a tenant under the statutory scheme is clearly protected.

11. Our attention has been invited to Chapter V of the Tenancy Act, 2021, which contains provisions relating to protection of tenant against eviction. Section 21(1) of the Tenancy Act, 2021 confers protection upon a tenant in the manner provided in the Statute itself. Sub-section (2) of Section 21 permits the Rent Authority to make an order of eviction where the tenanted premises requires demolition. Sub-section (2)(e) of Section 21 reads as under :-

“21. Protection of tenant against eviction-

(1)

(2) The Rent Authority may, on an application made to it by the landlord in such manner as may be prescribed, make an order for eviction and recovery of possession of the premises on one or more of the following grounds, namely:-

² Tenancy Act, 2021

- (a)
- (b)
- (c)
- (d)
- (e) where it is necessary for the landlord to carry out any repair or construction or rebuilding or addition or alteration or demolition in respect of the premises or any part thereof, which is not possible to be carried out without the premises being vacated:

Provided that after such repair, construction, rebuilding, addition or alteration, the tenant may be allowed to reoccupy the premises only when it has been mutually agreed to between the landlord and the tenant and a new tenancy agreement has been submitted with the Rent Authority:

Provided further that the tenant shall not be allowed to reoccupy the premises,-

- (i) in the absence of submission of such mutual tenancy agreement with the Rent Authority; and
- (ii) in cases where the tenant has been evicted under the orders of a Rent Authority.

.....
.....”

12. Section 4 of the Tenancy Act, 2021 provides for tenancy agreement. It also deals with tenancy created before the commencement of the Tenancy Act, 2021.

13. Having examined the statutory scheme, we find that any tenant who is entitled to protection under the provisions of the Tenancy Act, 2021 would be at liberty to make appropriate application before the Rent Authority which may then pass appropriate orders in accordance with law. The right which is available to a tenant in respect of dilapidated building, however, will have to be enforced subject to the provisions of Section 331 of the Act, 1959 which deal with a special exigency where the tenanted building requires imminent demolition for protection of life of individuals. Sections 331(1) and 331(3) of the Act, 1959 are as under:-

- (1) If it shall at any time appear to the Municipal Commissioner that any structure (including under this

expression any building wall, parapet, pavement, floor steps, railing, door or window frames or shutters or roof, or other structure and anything affixed to or projecting from or resting on, any building, wall, parapet or other structure) is in a ruinous condition or likely to fall, or in any way dangerous to any person occupying, resorting to or passing by such structure or any other structure or place in the neighborhood thereof, the Municipal Commissioner may, by written notice, require the owner or occupier of such structure to pull down, secure, remove or repair, such structure or thing or do one or more of such things and to prevent all cause of danger therefrom.

(2)

(3) If it appears to the Municipal Commissioner that the danger from a structure which is ruinous or about to fall is imminent he may, before giving notice as aforesaid or before the period of notice expires, fence off, take down, secure or repair the said structure or take such steps or cause such work to be executed as may be required to arrest the danger.”

14. In the facts of the present case, materials on record clearly reveal urgent requirement of demolition of the tenanted premises, which is in dilapidated condition. The authorities of Nagar Nigam, Aligarh have proceeded to act in furtherance of the Statute but requisite action of demolition has so far not been undertaken only because of resistance by the tenants of the premises in question. Although 44 persons claim to be tenants of the premises in question but their status as tenants is otherwise disputed. We are, however, not inclined to dwell upon this aspect of the matter as the question with regard to the determination of tenancy of individuals would be gone into by the Rent Authority in accordance with the applicable Statute.

15. At this juncture, we may only observe that the rights of the tenants in such an exigency will have to be dealt with under the Tenancy Act, 2021. The tenants, however, will not be entitled to object to the expeditious demolition of the tenanted building, particularly when the authorities have inspected the said premises and found the requirement of its demolition as imperative. The applicable scheme under the Act, 1959 for protection of life of individuals on account of

building being dilapidated and posing threat to life of individuals will have to be given primacy over the protection of tenancy rights of individual applicants.

16. In such circumstances, we are of the view that the authorities of Nagar Nigam, Aligarh would be required to demolish the dilapidated tenanted premises in question, in accordance with law. Such action/exercise of the Nagar Nigam cannot be resisted by the tenants by making protests etc. The Nagar Nigam shall provide a reasonable opportunity to such occupants to remove their belongings.

17. We, in such circumstances, deem it appropriate to direct the District Magistrate, Aligarh as well as Senior Superintendent of Police, Aligarh to provide requisite police force on the request of Nagar Nigam, Aligarh so that the dilapidated structure in question be demolished. Such action would be undertaken strictly in accordance with law. We also provide that the demolition of the structure would in no way affect the rights of the tenants as are available to them under the Tenancy Act, 2021. The requisite action in terms of the notice/Act, 1959 would be undertaken at the earliest, preferably within two months from today.

18. We expect the tenants occupying the premises in question to be alive to the concern of protection of life of individuals due to imminent collapse of the building and not to create any resistance/objection in demolition of the building.

19. The appearance of the Municipal Commissioner, Nagar Nigam, Aligarh is dispensed with.

20. With the aforesaid observations/directions, this writ petition is **disposed of**.

Date:- 03.07.2025

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