

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

CRIMINAL WRIT PETITION NO. 761/2018

Smt. Sunderabai Vishwanath Piparwar,
aged about 81 years, Occ. Household,
R/o. Gandhi Chowk, Masjid Ward
(Old Shriram Mandir Ward, Rajura,
Tah. Rajura, Dist. Chandrapur.

(Org. NA/Rev. petitioner)

Through LRs.

Vijay S/o Vishwanath Piparwar,
aged about 51 years, Occ. Business,
r/o. Jawahara Nagar, Ward No. 14,
Rajura, Tah. Rajura, Dist. Chandrapur
**(Amendment carried out as per Court's
order dated 21.01.2021).**

....PETITIONER

VERSUS

1. The Sub-Divisional Magistrate,
Rajura, Tah. Rajura, Dist. Chandrapur,
2. The State of Maharashtra through
Sub Divisional Magistrate, Rajura,
Tah. Rajura, Dist. Chandrapur.
3. Baba Vishwananth Piparwar,
Aged about 61 years, Occ. Business
R/o. Gadi Ward, Rajura, Tah. Rajura,
Dist. Chandrapur.

Ori.applicant/Rev.Rspdt.

....RESPONDENTS

Mr. Rohit Joshi, Advocate for petitioner.
Mr. H. D. Dubey, APP for respondent Nos. 1 & 2.
Mr. Anand S. Thotange, Advocate for respondent No.3.

CORAM : **VINAY JOSHI, J.**
DATE OF JUDGMENT : **01.08.2022.**

ORAL JUDGMENT

By consent of both parties, the petition is taken up for final disposal.

2. The petitioner is challenging the conditional order passed by the Sub-Divisional Magistrate ('SDM'), Rajura, Tahsil Rajura, District Chandrapur dated 27.09.2017 in term of Section 133 of the Code of Criminal Procedure ('cODE'), by which the petitioner including Municipal Council, Rajura were directed to remove or demolish dilapidated building within stipulated period. The said order was challenged in Criminal Revision No. 66/2017 which was dismissed. Hence, said order is also under challenge.

3. Besides other grounds, the petitioner took first and foremost objection that due procedure as contemplated under Section 133 of the Code has not been followed. It is submitted that the SDM has not passed the preliminary order before passing the impugned order dated 27.09.2017. The other side supported the said order.

4. Respondent No. 3 Baba Piparwar who claims to be sharer of the house property namely building standing over the property No. 70/71 situated at Gandhi Chowk, Rajura has applied to the SDM on 07.07.2017 seeking demolition of said property on account that it being hundreds years old as become dangerous. It is contended that the

property is adjacent to the main road and in case, it is collapsed, it is dangerous for life of people. On the basis of said application, SDM called report and on that basis has passed impugned order directing for demolition.

5. Bear reading of Section 133 of the Code indicates that in case of public nuisance, the first step is about passing of conditional order to remove the nuisance. In case, the said conditional order was not obeyed then the objector has to be called to appear and respond the show cause notice, as to why the order should not be made absolute. In other words, show cause notice must be preceded with a conditional order for removal of nuisance. In case at hand, the respondents are unable to show that the impugned order is preceded by any conditional order of SDM. The Supreme Court in case of ***C. A. Avarachan Vs. C. V Sreenivasan and Another, (1996) 7 SCC 71***, ruled that non-compliance of the mandatory requirement of drawing up a preliminary order vitiates the entire proceedings.

6. Pertinent to note that the SDM though termed impugned order as a conditional order, however has not issued show cause notice to the other side for the purpose of inquiry. Section 138 of the Code contemplates that after passing of preliminary order followed by show cause notice, the SDM is bound to make inquiry by taking evidence in the matter, if any. On his satisfaction, the order can be altered or made

absolute. There is no record to indicate that the show cause notice was served on any one or notified by proclamation so as to give an opportunity to the objectors. The impugned order apparently shows that no opportunity was given to the other side, as it was not preceded by the preliminary order of issuing show cause notice. Apparently, the essential requirements of Section 133 of the Code have not been followed. In the circumstances, impugned order dated 27.09.2017 and the order passed in revision dated 17.04.2018 would not sustain in the eyes of law.

7. In view of above, petition stands allowed and disposed of accordingly.

8. The impugned order dated 27.09.2017 passed by the SDM and consequential order dated 17.04.2018 passed in revision are quashed and set aside.

9. The matter is remitted back to the SDM for its fresh consideration in accordance with law. All the objections raised by the petitioner including maintainability are kept open.

10. The SDM shall complete inquiry within a period of three months from the receipt of intimation of this order.

11. Rule is made absolute in above terms.

(VINAY JOSHI, J)