

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

WRIT PETITION NO.7720 of 2019

1. Saraswati wd/o Vinod Jaiswal,
Aged about 61 years, Occupation: Nil.
2. Parish s/o Vinod Jaiswal,
Aged about 41 years, Occupation-Business.
3. Sarang s/o Vinod Jaiswal,
Aged about 39 years, Occupation-Business,

All R/o LB-43, VHB Colony,
Laxmi Nagar, Nagpur-10

..... **PETITIONERS**

...V E R S U S...

1. State of Maharashtra, Urban Development Department,
through its Principal Secretary,
Mantralaya, Mumbai-32.
2. The Nagpur Municipal Corporation, Nagpur.
Through its Commissioner,
3. The Executive Engineer,
Nagpur Municipal Corporation, Nagpur
The Competent Authority (Slum).
4. The Nagpur Improvement Trust,
Nagpur, through its Chairman.
5. The Nagpur Housing and Development Board,
Civil Lines, Nagpur, through its Chief Officer.
6. Mrs. Usha Ben Patel,
Aged Major,
R/o. 315-316, Deshpande Layout,
Wardhaman Nagar, Nagpur.
7. Keshavlal Patel,
Aged Major,
R/o. 315-316, Deshpande Layout,
Wardhaman Nagar, Nagpur.

..... **RESPONDENTS**

Shri Uday Dable, Advocate for petitioners.

Ms T. H. Udeshi, Assistant Government Pleader for respondent no. 1.

Shri A.S.Agrawal, Advocate for respondent nos. 2 and 3.

Shri G.A. Kunte, Advocate with Ms Richa Tiwari, Advocate with Shri P.S.Tiwari,
Advocate for respondent no.4

Shri C.B.Dharmadhikari, Advocate for respondent no.6 and 7.

CORAM :- A.S.CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

ARGUMENTS WERE HEARD ON : 26th July, 2022

JUDGMENT IS PRONOUNCED ON : 12th August, 2022

JUDGMENT (Per A.S.CHANDURKAR, J.)

In view of notice for final disposal issued earlier, the learned counsel for the parties have been heard by issuing **Rule** and making the same returnable forthwith.

2. The petitioners claim ownership right on the property standing on Plot No.116 City Survey No.399 at Central Avenue, Nagpur. The initial lease granted to the predecessor of the petitioners by the Nagpur Improvement Trust was dated 15.09.1959 for a period of 30 years. The same has thereafter been renewed for a further period of 30 years from 01.04.1990. The building plan submitted to the Nagpur Improvement Trust came to be sanctioned by the Building Engineer on 24.12.1991 and it is the case of the petitioners that thereafter they have undertaken construction on the aforesaid plot. Though the said construction undertaken was in accordance with the sanctioned plan, a complaint was made by the respondent nos. 6 and 7 with the Nagpur Municipal Corporation. On 22.03.2019 the Executive Engineer as well as the Competent Authority (Slum) of the Nagpur Municipal

Corporation issued a notice under Section 3Z-1(1) of the Maharashtra Slum Areas (Improvement, Clearance and Re-development) Act, 1971 (for short, the Act of 1971). In the said notice, it was stated that an area where the plot was situated was declared to be a slum area under the Act of 1971 as per Code No.294 and that the petitioners had undertaken unauthorised construction on the first floor of the structure in question. Being aggrieved by the issuance of the aforesaid notice, the petitioners on 27.03.2019 filed an appeal under Section 35 of the Act of 1971 for challenging the same. The Additional Collector by his order dated 30.09.2019 held that while the construction on the ground floor was about 50 years old, the construction on the first floor was a new construction. No permission had been obtained while undertaking the construction on the first floor and as such the same was unauthorised. On that count, the notice dated 22.03.2019 was upheld and the appeal came to be dismissed. Being aggrieved the petitioners have challenged the aforesaid notice dated 22.03.2019 in this writ petition.

3. Shri Uday Dable, learned counsel for the petitioners submitted that the Executive Engineer of the Nagpur Municipal Corporation had no jurisdiction to issue notice dated 22.03.2019. According to him, Notification dated 29.11.1979 had been issued by the Chief Officer, Nagpur Housing and Area Development Board in exercise of powers under Section 108(1) of the Maharashtra Housing and Area Development Act, 1976 (for short, the Act of 1976). Under that Notification the area bearing Khasra No.54 in Ward No.35 was declared to be a slum area. Since the area had been declared to be a slum under the Act of 1976, it was not permissible for the

Executive Engineer of the Nagpur Municipal Corporation to have issued the impugned notice. It was only the Nagpur Housing and Area Development Board or presently the Maharashtra Housing and Area Development Board that had the authority to take action under the Act of 1971. The Nagpur Municipal Corporation was not the Competent Authority to take any action and therefore, the notice dated 22.03.2019 was without jurisdiction. Attention was invited to the Notification dated 23.04.2015 by which the Executive Engineer had been shown to be appointed as Competent Authority while the Additional Collector was shown to be the Appellate Authority under Section 35 (1) of the Act of 1971. It was thus submitted that since the impugned notice was issued by the Nagpur Municipal Corporation, the same was illegal and could not be acted upon. The learned counsel placed reliance on the decision in *Manohar Janardhan Bhadade vs. Smt. Madhuri Ramesh Walokar and others* [2012(3)Mh.L.J.314] to substantiate his contentions. It was thus submitted that the impugned notice was liable to be set aside.

4. Shri A.S.Agrawal, learned counsel for the Nagpur Municipal Corporation opposed the aforesaid submissions. By relying upon the affidavit in reply filed on behalf of the respondent nos. 2 and 3, it was submitted that the building plan for undertaking construction had been sanctioned by the Nagpur Improvement Trust and this clearly indicated that the Nagpur Housing and Area Development Board was not the Planning Authority nor the Competent Authority under the Act of 1971. In view of the Notification dated 23.04.2015 the Executive Engineer (Slum) of the Nagpur Municipal Corporation had been named as the Competent Authority for the

purposes of Act of 1971. The impugned notice had thus been issued by the Competent Authority. Merely because the Notification dated 29.11.1979 had been issued under Section 108 (1) of the Act of 1976, the same would not mean that the Competent Authority under Section 3 (1) of the Act of 1971 had no jurisdiction to take action under the Act of 1971. Moreover, the petitioners had invoked the statutory remedy under Section 35 of the Act of 1971 and had thereafter sought to question the notice dated 22.03.2019. The decision on which the petitioners sought to rely had no applicability to the case in hand. It was thus submitted that the writ petition was liable to be dismissed.

Shri G.A.Kunte, learned counsel for the respondent no.4-Nagpur Improvement Trust also opposed the submissions made by the learned counsel for the petitioners. He pointed out that the initial allotment of the plot in question was by the Nagpur Improvement Trust but as it was not the Planning Authority, no relief against it was sought.

The learned counsel for the respondent nos. 6 and 7 also opposed the prayers made in the writ petition.

5. We have heard the learned counsel for the parties and we have perused the documentary material placed on record. The plot in question is a leasehold plot and the same has been granted to the predecessor of the petitioners by the Nagpur Improvement Trust. The building plan in question has also been sanctioned by the Nagpur Improvement Trust on 24.12.1991. By the Notification dated 29.11.1979 issued under Section 108(1) of the Act of 1976 an area where the plot in question is

situated has been notified as slum area. On noticing unauthorised construction being undertaken on the first floor, a notice under Section 3 Z-1(1) of the Act of 1971 has been issued by the Executive Engineer and the Competent Authority (Slum), Nagpur Municipal Corporation on 22.03.2019. Perusal of Section 3 Z-1(1) of the Act of 1971 indicates that on the Competent Authority noticing any unauthorised or illegal dwelling structure having been constructed or any addition being made to the existing structure after 01.01.2000 and the same is without any permission, the Competent Authority is empowered to issue notice calling upon the concerned person to show cause as to why the same should not be removed. Such notice of twenty-four hours has been given to the petitioners by issuing such notice. By virtue of the Notification dated 23.04.2015 issued by the Housing Department under the Act of 1971 insofar as the Nagpur Municipal Corporation is concerned, the Executive Engineer (Slum) has been appointed as the Competent Authority. It is thus clear that the impugned notice has been issued by the Competent Authority. The Additional Collector as the Appellate Authority has found that there was no permission obtained by the petitioners for making construction on the first floor nor was it found that the said construction was an old one which means that it was existing prior to 01.01.2000. In this factual backdrop, it cannot be said that notice dated 22.03.2019 has been issued in absence of any jurisdiction and said notice cannot be questioned on that ground.

6. According to the petitioners, the Notification dated 29.11.1979 under Section 108 (1) of the Act of 1976 was issued by the Nagpur Housing and Area

Development Board notifying the area as slum area, the Executive Engineer of the Nagpur Municipal Corporation had no jurisdiction to issue the impugned notice. Said contention cannot be accepted. Issuance of Notification identifying a particular area as a slum area is one thing and action taken pursuant thereto by the Competent Authority under the Act of 1971 is another thing. What is relevant to note is that the area in question has been notified as a slum area on 29.11.1979. The Executive Engineer (Slum), Nagpur Municipal Corporation, having been appointed as the Competent Authority, under Section 3 Z-1(1) of the Act of 1971 he is authorised to take action in accordance with the Act of 1971. It is rightly pointed out that the Planning Authority at the initial stage was the Nagpur Improvement Trust and thereafter it is the Nagpur Municipal Corporation. If the Competent Authority notices any unauthorised construction which has been undertaken after 01.01.2000 without prior sanction, such Authority is competent to act in accordance with Section 3 Z-1(1) of the Act of 1971. The ratio of the decision in *Manohar Janardan Bhadade* (supra) cannot be made applicable to the facts of the present case since the question of applicability of the provisions of Section 22 of the Act of 1971 being attracted was involved therein. In that case a similar Notification dated 29.11.1979 identifying the suit property as slum area had been issued and it was urged that in absence of any permission from the Competent Authority as required under Section 22 of the Act of 1971, the eviction of the tenant could not have been directed. It was also noticed that the Nagpur Housing and Area Development Board was not the Competent Authority under Section 2(c) of the Act of 1971 in absence of no

notification under Section 3(1) of that Act. As stated earlier, in the present case the notice in question has been issued by the Competent Authority under Section 3 (1) in view of the Notification dated 23.04.2015.

7. For aforesaid reasons, we do not find any merit in the challenge raised to the notice dated 22.03.2019. The writ petition thus stands dismissed with no order as to costs. Rule stands discharged accordingly.

The interim order passed earlier shall continue to operate for a period of four weeks from today and shall cease to operate automatically thereafter.

(URMILA JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)

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