



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No.3342 of 2023

Smt. Fatima B. Mohd. Sheikh Wajir Thr. Power of Attorney Sheikh Naushad Ahmad
Vs

Asst. Commissioner, Dharampeth Zone, Municipal Corporation, Nagpur And Another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.S. Shinde, Advocate for the Petitioner/s

Shri J.B. Kasat, Advocate for the respondent Nos.1 and 2

CORAM : ANIL S. KILOR, J.

DATED : 17.10.2023

1. Heard.
2. In this petition, the petitioner is the occupier of the shop 29 situated at Municipal Corporation Bazar Building, Gokulpeth, Nagpur. Because of default in payment of rent, a show cause notice was served on the petitioner on 10.08.2021, calling upon the petitioner to submit an explanation within 10 days as regards outstanding amount of rent to the tune of Rs.1,84,453/-.
3. The petitioner accordingly submitted his reply to the said show cause notice and also paid Rs.30,000/- as part of the arrears of rent.
4. Thereupon, the Deputy Commissioner (Estate), Municipal Corporation, Nagpur passed an order of eviction on 13.07.2022 and thereby, directed the petitioner to vacate the shop 29 within one month.
5. Hence, the petitioner approached to the District Judge-6 by filing an appeal under Section 81-F of the Maharashtra

Municipal Corporations Act, 1949 (for short “the Act of 1949”) as Misc. Civil Appeal No.200 of 2022 which came to be dismissed vide judgment and order dated 09.12.2022, which is the subject matter of challenge in this petition.

6. The learned counsel for the petitioner submits that though the reply in detail was filed to the show cause notice and Rs.30,000/- was deposited as a part payment of arrears of rent, none of the points raised in the reply as well as the fact of deposit of Rs.30,000/- was considered by the Deputy Commissioner (Estate), Municipal Corporation, while passing the order dated 13.07.2022. He therefore, submits that the impugned order is erroneous and liable to be quashed and set aside.

7. On the other hand, the learned counsel for the respondent Nos.1 and 2 supports the orders of the Deputy Commissioner (Estate), Municipal Corporation and the District Judge-6 and prays for dismissal of the present petition.

8. In light of the rival contentions of the parties, I have perused the record and the impugned orders passed by the Deputy Commissioner (Estate), Municipal Corporation and the learned District Judge-6.

9. From the record, it is evident that to the show cause notice dated 10.08.2021, the petitioner filed his reply in detail which runs into seven pages. However, while passing the order dated 13.07.2022, there is no whisper about points raised in the reply or about the fact of deposit of amount of Rs.30,000/- as part payment of arrears of rent.

10. It is apparent that the order, issued by the Deputy Commissioner (Estate), Municipal Corporation, is stereo-type and even the information i.e. the name of occupier, market name, shop number and period of arrears of rent written in hand which shows that the Deputy Commissioner (Estate), Municipal Corporation has not passed the order independently in each of the matters by considering the written statement and the fact that whether any part payment was made towards arrears of rent.

11. After going through the provision of Section 81-B of the Act of 1949, it is evident that issuance of show cause notice and calling explanation is not an empty formality, but the officer has to consider the written statement if any filed by a person who was served with the notice under Section 81-B(1) of the Act of 1949 and to pass necessary orders.

12. In the present matter, in a cryptic manner, the order came to be passed by the Deputy Commissioner (Estate), Municipal Corporation, without considering and appreciating the written statement filed by the petitioner and a fact that the petitioner had deposited the partial amount of the arrears of rent.

13. Hence, the impugned order dated 13.07.2023 vitiates and consequently, as the learned District Judge-6 failed to appreciate the above referred facts, which vitiate the order of the Deputy Commissioner (Estate), Municipal Corporation, the order of the District Judge-6 also vitiates.

14. Accordingly, I am of the opinion that the matter needs to be remanded back to the Deputy Commissioner (Estate), Municipal Corporation, Nagpur, for deciding the same afresh.

15. At this stage, the learned counsel for the petitioner makes a statement that the petitioner is ready to deposit the whole amount towards arrears of rent, without prejudice to the rights of the petitioner to raise grievance about the quantum of the amount.

16. In the circumstances, I pass the following order:

(i) The writ petition is partly **allowed**.

(ii) The order dated 13.07.2022 passed by Deputy Commissioner (Estate), Municipal Corporation, Nagpur, is hereby quashed and set aside, consequently, the judgment and order dated 09.12.2022 passed by the learned District Judge-6, Nagpur in Misc. Civil Appeal No.200 of 2022, is quashed and set aside.

(iii) The matter is remanded back to the learned Deputy Commissioner (Estate) Municipal Corporation, Nagpur for deciding the same afresh, after considering the written statement filed by the petitioner.

(iv) The petitioner shall appear before the Deputy Commissioner (Estate), Municipal Corporation, Nagpur on **02.11.2023 at 11.00 a.m.**

(v) The petitioner is at liberty to deposit the whole amount of arrears of rent, as per the show cause notice, within six weeks from today.

Accordingly, the writ petition is **disposed of** in the above terms. No order as to costs.

[ANIL S. KILOR, J.]