

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

WRIT PETITION NO. 2921 OF 2023

Smt. Jubeda Begum Aji Khan, Age 85 years, Occupation, Housewife, Resident of House No.4260/86/A, Ward No.20, Bidipeth, Tajabad, Nagpur.	Petitioner
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-Vs.-

1. State of Maharashtra through Secretary Housing Department, Office at Mantralaya, Madam Kama Raod, Hutatma Rajguru Chowk, Nariman Point, Mumbai-400032.
2. First Appellate Authority/ Additional Collector, office at Civil Line, Collector Building Ground Floor, Beside District Court Building, Nagpur-440001.
3. Executive Engineer Slum/ Competent Authority Slum, Office at 5th Floor, New Administrative building, Civil Lines, Nagpur Municipal Corporation, Nagpur-440001.
4. Assistant Commissioner/Ward Officer, Nehru Nagar Zone-5, Nagpur Municipal Corporation, Nagpur. Office at Tiranga Chowk, Nehru Nagar, Nagpur-440012.
5. Assistant Commissioner Enforcement, New Administrative building, Civil Lines, Nagpur

Municipal Corporation, Nagpur-440001.

6. Hazrat Baba Tajuddin Trust, through its Secretary, Office at Tajabad Shareef, Near Dighori, Umred Road, Nagpur-440024.
7. Deputy Engineer (PWD), Nehru Nagar Zone-5, Nagpur Municipal Corporation, Nagpur Office at Tiranga Chowk, Neharu Nagar, Nagpur-440012.

Respondents

WRIT PETITION NO. 2923 OF 2023

Farooq Gafoor Sheikh, Age Major, Occupation: Private, Resident of House No.4260/72/A, Ward No.20, Bidipeth, Tajabad, Nagpur.

Petitioner

-Vs.-

1. State of Maharashtra through Secretary Housing Department, Office at Mantralaya, Madam Kama Raod, Hutatma Rajguru Chowk, Nariman Point, Mumbai-400032.
2. First Appellate Authority/ Additional Collector, office at Civil Line, Collector Building Ground Floor, Beside District Court Building, Nagpur-440001.
3. Executive Engineer Slum/ Competent Authority Slum, Office at 5th Floor, New Administrative building, Civil Lines, Nagpur Municipal Corporation, Nagpur-440001.

4. Assistant Commissioner/Ward Officer, Nehru Nagar Zone-5, Nagpur Municipal Corporation, Nagpur. Office at Tiranga Chowk, Nehru Nagar, Nagpur-440012.
5. Assistant Commissioner Enforcement, New Administrative building, Civil Lines, Nagpur Municipal Corporation, Nagpur-440001.
6. Hazrat Baba Tajuddin Trust, through its Secretary, Office at Tajabad Shareef, Near Dighori, Umred Road, Nagpur-440024.
7. Deputy Engineer (PWD), Nehru Nagar Zone-5, Nagpur Municipal Corporation, Nagpur Office at Tiranga Chowk, Nehru Nagar, Nagpur-440012.

Respondents

WRIT PETITION NO. 2946 OF 2023

Amjad Khan Aziz Khan, Age 45, Occupation, Private, Resident of House No.4260/A, Ward No.20, Bidipeth, Tajabad, Nagpur.

Petitioner

-Vs.-

1. State of Maharashtra through Secretary Housing Department, Office at Mantralaya, Madam Cama Road, Hutatma Rajguru Chowk, Nariman Point, Mumbai-400032.
2. First Appellate Authority/ Additional Collector, office at Civil Line, Collector Building Ground

Floor, Beside District Court Building, Nagpur-440001.

3. Executive Engineer Slum/Competent Authority Slum, Office at 5th Floor, New Administrative building, Civil Lines, Nagpur Municipal Corporation, Nagpur-440001.
4. Assistant Commissioner/Ward Officer, Nehru Nagar Zone-5, Nagpur Municipal Corporation, Nagpur. Office at Tiranga Chowk, Nehru Nagar, Nagpur-440012.
5. Assistant Commissioner Enforcement, New Administrative building, Civil Lines, Nagpur Municipal Corporation, Nagpur-440001.
6. Hazrat Baba Tajuddin Trust, through its Secretary, Office at Tajabad Shareef, Near Dighori, Umred Road, Nagpur-440024.
7. Deputy Engineer (PWD), Nehru Nagar Zone-5, Nagpur Municipal Corporation, Nagpur Office at Tiranga Chowk, Nehru Nagar, Nagpur-440012.

Respondents

Mr.Karan Ramesh Gour, counsel for the petitioners.
Mr.N.S.Rao, AGP for respondents 1 and 2.

**CORAM:ROHIT B. DEO AND
MRS. VRUSHALI V. JOSHI, JJ.**

DATE : 4th MAY, 2023

ORAL JUDGMENT (Per : Rohit B. Deo, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3. Learned AGP Mr. N.S.Rao raises a preliminary objection on the premise that the petition is highly premature.

4. In the context of the preliminary objection, we have perused the prayer in these petitions. The first prayer is that the proceedings of Slum Appeal Case, which is pending before the appellate authority, Additional Collector, be stayed, till the pendency of the writ petitions. We may note, that the first prayer is in fact an *interim relief* prayer.

5. The next prayer in the petitions is that the order dated 06.04.2023 passed in Slum Appeal Case be stayed till the pendency of the petitions, which again is an *interim relief* prayer.

6. The substantive prayer in the petitions appears to be that the order dated 06.04.2023 in Slum Appeal Case be quashed (annexure 'F').

7. By the order impugned, the intervention application preferred by the Hazrat Baba Tajuddin Trust is allowed, and the said trust is permitted to participate in the proceedings.

8. The appeal is preferred by the petitioners assailing the order dated 24.02.2023 which is passed by respondent 3- which is the Slum Authority, whereby the objection preferred by the petitioners to the notice issued under Section 3Z-1(1) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short hereinafter referred to as Slums Act, 1971 dated 03.01.2022 is rejected and the notice is held legal.

9. By the notice under Section 3Z-1(1) of the Slums Act, 1971, the petitioner is directed to remove the illegal and unauthorised construction. This notice culminated in the order dated 24.02.2023. By the said reasoned order, the notice is made absolute against which the petitioners

preferred the appeal from which the present petitions have arisen.

10. The submission of the learned counsel appearing for the petitioners is that the order permitting Hazrat Baba Tajuddin Trust to intervene in the matter is illegal and that even the owner of the property is not entitled to intervene.

11. Reliance is placed on the decision of the Supreme Court in **Mohamed Hussain Gulam Ali Shariffi Vs. Municipal Corporation Bombay and ors reported in Civil Appeal No.12273 of 2016 (Arising Out of SLP (c) No.35321 of 2016 Decide don 09.12.2016.**

12. The factual matrix in **Mohamed Hussain Gulam Ali Shariffi Vs. Municipal Corporation Bombay** (supra) was that Mohamed Hussain Gulam Ali Shariffi preferred a Civil Suit against the Municipal Corporation of Greater Bombay challenging the notice issued by Corporation under Section, 351 of the Mumbai Municipal Corporation Act, 1988. The intervention was sought on the premise that the proposed intervenors have ownership rights in the suit and the

proposed intervenors have filed suit for Specific Performance which is pending. The plaintiff opposed the intervention on the premise that the proposed intervenors are not necessary or proper parties to the suit. The Trial Court allowed the application seeking intervention and the High Court dismissed the Writ Petition. In appeal, Hon'ble Supreme Court observed in para 12 that the proposed intervenors are neither necessary nor proper parties and from perusal of the plaint averments the question which is required to be decided in the suit is whether the notice issued under Section 351 of the Mumbai Municipal Corporation Act, 1988 is legally valid and it is only the Mumbai Municipal Corporation, which has issued the notice which is a necessary party. This observation is qualified by further observations in paragraphs 15 and 16, that in the facts of the case, for deciding the legality of the notice in the suit on merits, the rights *inter-se* between the plaintiff and the proposed intervenors need not be adjudicated.

13. The petitioners further rely on the decision of a learned Single Judge in **Writ Petition No. 937 of 2017**

(**Shriman Kishor Chandrakant Urane Vs. City of Nagpur Corporation and ors.**) which again considers the provisions of Rule 10(2) of the Civil Procedure Code, 1908. The learned Single Judge relies on the decision of the Hon'ble Supreme Court in Mohamed Hussain Gulam Ali Shariffi (supra).

14. The next decision on which the petitioners rely is the decision of a learned Single Judge in **Sulbha Devendra Kokate Vs. Surekha Kokate and ors. in Writ Petition 1587 of 2020 Decided on 30.03.2021.**

15. We will consider the decisions on which the reliance is placed by the petitioners at a later stage.

16. It is of some significance, that the decisions are entered on the touchstone of the provisions of the Civil Procedure Code, 1908.

17. In our considered view, the reliance placed on the said decisions is clearly based on misconception of law.

18. The notice of the demolition of the unauthorised structure is issued in exercise of power under Section 3Z-1 of the Slums Act, 1971. The said provision reads thus:-

3Z-1. Powers to Competent Authority to demolish unauthorised or illegal dwelling structures:-

“(1) Where a Competent Authority, upon a complaint from any person or report from its officer or police or any other record or information in its possession, is satisfied that any unauthorised or illegal dwelling structure or part thereof has been constructed, or any addition to the existing structure as recorded on photo-pass, has been erected, after the (1st January,2000] within the area of its jurisdiction, without obtaining necessary permissions required to be obtained in that behalf under the relevant laws, of the concerned statutory authorities, it shall forthwith serve upon the owner of such unauthorised or illegal dwelling structure or any other person claiming an interest therein and also upon the person who is in occupation of such structure, a written notice to show cause, within twenty four hours as to why an order of demolition of the structure could not be made.

(2) If the owner of such unauthorised or illegal dwelling structure or any other person claiming an interest therein or the occupier of such structure is, by any reason whatsoever, not available for serving or receiving the notice, such notice shall be affixed at a conspicuous place on such structure, and it will be deemed to be due service of notice on the concerned person or persons.

(3) The person or persons upon whom the notice has been served under sub-section (1) or (2), as the case may be, shall, within twenty-four hours appear before the Competent Authority and produce or

cause to be produced by his agent or representative, the necessary documents to prove that the requisite statutory permission for construction, reconstruction, addition or extension, as the case may be, has been duly obtained by him and that the construction, re-construction, addition or extension is not unauthorised or illegal.

(4) The Competent Authority shall, thereupon, on scrutiny of documents, if any, produced by such person, on being satisfied that the dwelling structure, addition to it or extension thereof, is unauthorised or illegal, forthwith make an order, in writing, for demolition of such structure, immediately, and in any case not later than twenty-four hours from the time of making of the order, by such person :

Provided that, if the owner, or as the case may be, the person claiming an interest in the structure or the occupier of such structure or his agent or representative fails to appear before the Competent Authority, within the time specified in the notice, the structure shall be treated as unauthorised or illegal and the Competent Authority shall pass an order for its demolition.

(5) Where an order of demolition of such unauthorised or illegal dwelling structure is made under sub-section (4) or the proviso thereto, the owner of the structure or any other person claiming an interest therein or the person in occupation of such structure shall, immediately demolish that structure within twenty-four hours from the passing of the demolition order and if, the concerned person who is ordered to demolish the structure, fails to demolish such structure within that time, the Competent Authority shall forthwith demolish the structure and remove the debris with the help of its staff and the Police Officer from the area where such structure is situated, and sell the debris of such demolished structure to recover the expenses incurred by the Competent Authority for such demolition and removal of debris. If the

expenses incurred are not satisfied out of the proceeds of sale of the debris of such structure, the same shall be recoverable from the owner of the structure or any other person claiming an interest therein or from the person who was in occupation of such structure, as arrears of land revenue”.

19. The statutory scheme is that the Competent Authority is obligated to act upon a complaint from **any person** or on the basis of the report of his officer or police or any other record or information in its possession, against an unauthorised or illegal structure. The Competent Authority is obligated to serve notice upon the owner of the unauthorised or illegal dwelling structure **or** any other person claiming an interest therein **and** also upon the person who is in occupation of such structure. The owner of the unauthorised or illegal dwelling structure or any other person claiming an interest therein, is entitled to, in addition to an occupier, to respond and to show cause against the proposed demolition. Section 35(1) of the Slums Act, 1971 provides for an appeal. We do not read anything in Section 35 of the Slums Act, 1971 as would preclude the owner of the property on which the structure is illegally constructed or the owner of the illegal structure from participating in the appeal. If such a condition

is read in Section 35 of the Slums Act, 1971 the statutory scheme shall be rendered ineffective and otiose.

20. We note that the notice which is the genesis of the interim litigation is not restricted to the petitioners. The notice is also issued to the Hazrat Baba Tajuddin Trust. In this view of the matter, and the statutory scheme, the principles enunciated in the decisions on which learned counsel appearing for the petitioners are relying, would have no applicability in the fact situation. The appellate authority is perfectly justified, and we may observe was obligated, to permit Hazrat Baba Tajuddin Trust, who claims ownership, to participate in the proceedings in appeals, which have arisen from the statutory notice which is also issued to the Hazrat Baba Tajuddin Trust.

21. The decisions rendered on the touchstone of the provisions of Civil Procedure Code are of no avail in deciding the issue involved.

22. We see no substance in the present petitions. The writ petitions stand dismissed. We are not inclined to consider the prayer (v) in these petitions.

23. The petitions are dismissed with costs of Rs.10,000/- (Rs.Ten Thousand only) to be deposited with the High Court, Legal Aid Sub Committee, Nagpur in each petition within the next seven days.

24. Rule is discharged.

(MRS.VRUSHALI V. JOSHI, J)

(ROHIT B. DEO)