



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

WRIT PETITION NO. 5412 OF 2023

Alfiya Ali Sayyad w/o Sayyad Ayaz Ali, ..PETITIONER
Aged about 41 years, Occupation :
R/o. Plot No.24, Alfiya House, Near Rathod Mandir,
Rathod Layout, Anant Nagar, Nagpur.

Versus

1. The Chairman, ..RESPONDENTS
Nagpur Improvement Trust, Nagpur.
2. The Divisional Officer (West),
Nagpur Improvement Trust,
North Ambazari Road, Nagpur.
3. The Assistant Architecture Engineer,
Nagpur Improvement Trust,
Civil Lines, Nagpur.

Shri M.S.Sharma, Advocate for petitioner.
Shri G.A.Kunte, Advocate for respondents.

CORAM :- A.S.CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

DATE :- 23rd AUGUST, 2023

ORAL JUDGMENT (PER A.S.CHANDURKAR, J.)

Rule. Rule made returnable forthwith. Shri G.A.Kunte, learned counsel waives service for the respondents.

2. The challenge raised in the present writ petition is to the communication dated 11.08.2023 that seeks to implement notice dated 02.05.2016 issued under Section 53 of the Maharashtra Regional and Town Planning Act, 1966 (for short, the Act of 1966). The said notice dated 02.05.2016 refers to unauthorised construction undertaken by the petitioner at Khasra No.83/2. According to the petitioner, a reply was sent by the husband of the petitioner to the aforesaid notice on 27.05.2016 stating

therein that the petitioner was the owner of Khasra No.82/3 and hence he was not concerned with the property mentioned in the notice issued under Section 53 of the Act of 1966.

3. Shri M. S. Sharma, learned counsel for the petitioner has referred to the sale deed dated 26.06.2012 by virtue of which the petitioner's husband had purchased the property located in Khasra No.82/3. The property card has been thereafter corrected to indicate the name of the owner of the property. Notice issued under Section 53 of the Act of 1966 requires the husband of the petitioner to remove the alleged encroachment standing on Khasra No.83/2. Besides the fact that the property has been wrongly described, it is submitted that the said notice requires the construction to be removed within a period of one month which is not in consonance with Section 53 of the Act of 1966. Referring to the decision in *Kishor s/o Ramlu @ Rambhau Telang vs. The Municipal commissioner, Nagpur and others [2016(1) All M R 175]*, it is submitted that notice period of less than one month would vitiate such notice. It is therefore submitted that such erroneous notice could not be permitted to be executed.

4. Shri G. A. Kunte, learned counsel for the respondents has produced the relevant papers including the measurement map dated 29.04.2016. Its perusal indicates reference to Khasra No.83/2 which is also mentioned in the notice issued under Section 53 of the Act of 1966. He submitted that technical mistake with regard to description of the property should not be a ground to vitiate the action taken since the petitioner had

undertaken unauthorised construction which was liable to be demolished notwithstanding the fact that the property was described as Khasra No.83/2. It is also submitted that since the encroachment has been committed on open space and on the road, such action is being taken. He seeks to rely upon the order dated 28.08.2019 passed in **Public Interest Litigation No.67 of 2017** (*Tushar Guru Salien vs. State of Maharashtra and others*) at Principal Seat to support such action.

5. Having heard the learned counsel for the parties and having perused the documents, we find that undisputedly notice under Section 53 of the Act of 1966 has been issued in relation to Khasra No.83/2. The husband of the petitioner has categorically replied to the said notice stating that he had no concern with the property mentioned in the notice. The petitioner's husband sale deed refers to purchase of portion of Khasra No.82/3. It is thus clear that with regard to the property purchased by the husband of the petitioner, notice under Section 53 of the Act of 1966 has not been issued.

6. In addition, it is clear that the duration mentioned in the notice issued under Section 53 for taking action is less than one month which has been held to be impermissible in the decision in *Kishor s/o Ramalu @ Rambhau Telang* (supra). It is thus obvious that the impugned communication dated 11.08.2023 seeks to implement the notice which wrongly describes the property in question. On this short ground that the notice under Section 53 of the Act of 1966 refers to some other property with which the petitioner is not concerned, the impugned communication

seeking to take action against the petitioner's property is liable to be set aside.

The decision relied upon by the learned counsel for the respondents in *Tushar Guru Salier* (supra) is an order passed in Public Interest Litigation. We however find that the facts of the present case are clear and an imperfect notice sought to be executed. Such action proposed against the property of the petitioner has no legal support.

7. For aforesaid reasons, the following order is passed :

(i) The communication dated 11.08.2023 seeking to execute notice dated 02.05.2016 issued under Section 53 of the Act of 1966 is set aside on the ground that the notice dated 02.05.2016 has been issued with regard to Khasra No.83/2 while the impugned communication seeks to take action in respect of Khasra No.82/3.

(ii) It is clarified that it is open for the respondents to take appropriate action against any unauthorised construction as alleged at Khasra No.82/3 in accordance with law by following the procedure prescribed.

(iii) Rule stands disposed of in aforesaid terms with no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)