



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

WRIT PETITION NO.5003 OF 2011

[Dnyaneshwar Uddhao Manohar .Vrs. The Estate Manager and Ors.]

WITH

WRIT PETITION NO.5004 OF 2011

[Deorao Hagruji Meshram .Vrs. The Estate Manager and Ors.]

WITH

WRIT PETITION NO.5005 OF 2011

[Vijaykumar Ramdas Patil (Dead) thr LRs .Vrs. The Estate Manager and Ors.]

WITH

WRIT PETITION NO.5007 OF 2011

[Raju Baliram Somkuwar .Vrs. The Estate Manager and Ors.]

WITH

WRIT PETITION NO.5006 OF 2011

[Bhanudas Amrut Meshram .Vrs. The Estate Manager and Ors.]

WITH

WRIT PETITION NO.5010 OF 2011

[Kewal Narayan Bodele .Vrs. The Estate Manager and Ors.]

WITH

WRIT PETITION NO.5009 OF 2011

[Dilip Keshav Wankhede .Vrs. The Estate Manager and Ors.]

WITH

WRIT PETITION NO.5013 OF 2011

[Ravindra Janardhan Waghmare .Vrs. The Estate Manager and Ors.]

WITH

WRIT PETITION NO.5012 OF 2011

[Suresh Sadhuji Gondule .Vrs. The Estate Manager and Ors.]

WITH

WRIT PETITION NO.5011 OF 2011

[Waman Dhondbaji Sakhare .Vrs. The Estate Manager and Ors.]

WITH

WRIT PETITION NO.5008 OF 2011

[Hemlata Devidas Gajbhiye .Vrs. The Appellate Officer-1 and Ors.]

WITH

WRIT PETITION NO.5016 OF 2011**[Sushil Pusaram Sakhare .Vrs. The Appellate Officer-1 and Ors.]**

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Mr S. S. Shingane, Advocate for Petitioners in WP Nos.5003 of 2011, 5004/2011, 5005/2011, 5007/2011 and 5006/2011.

Ms K. Satpute, Advocate for Petitioners in WP Nos.5010/2011, 5009/2011, 5013/2011, 5012/2011, 5011/2011, 5008/2011 and 5016/2011.

Mr H. N. Verma, Advocate for Respondent.

CORAM : ANIL L. PANSARE, J.

DATE : 9th DECEMBER 2024.

1. Heard.
2. Issue involved in these petitions is common, hence, they are disposed of by this common order.
3. The petitioners are the holders of "A" type row houses/tenements constructed by the Nagpur Housing and Area Development Board (hereinafter referred to as, "the Board"). The petitioners were charge-sheeted under Section 66 of the Maharashtra Housing and Area Development Act, 1976 (hereinafter referred to as, "the MHADA Act"). The charge was that the petitioners have constructed a compound wall without taking written permission of the Board. The respondent No.3 – the Competent Authority has relied upon the statements of the Executive Engineer and the Chief Officer of the Board, who have stated that the petitioners have not encroached upon a land and secondly that the compound

wall has been constructed in accordance with the specifications given by the Board. Accordingly, the respondent No.3 dropped the proceedings of eviction.

4. The matter was carried by the respondent No.1 – the Estate Manager, Nagpur Housing and Area Development Board, Nagpur, before the respondent No.4 – the First Appellate Authority. The respondent No.4 has held that the reliance placed by the respondent No.3 upon the statements of the Executive Engineer and the Chief Officer, without giving opportunity to the other side, is contrary to the well recognized principles of natural justice, and therefore, ought not to have been blindly relied upon by the respondent No.3. The respondent No.4, however, relying on Section 66 of the MHADA Act, has held that the eviction proceedings are maintainable only upon the evidence of making material addition or alteration to the premises. The respondent No.4 took a view that the construction of a compound wall does not constitute a material addition or alteration to the tenements. The respondent No.4 has however held that the compound

wall has been constructed by the petitioners without obtaining prior permission from the Board. Accordingly, the appeal filed by the Board came to be partly allowed. The petitioners (the original respondents) were directed to remove unauthorized construction made by them within fifteen days.

5. During the course of hearing, a specific query was made as to whether the petitioners have obtained permission from the Board. The counsel for the petitioners answered that the Chief Officer *vide* letter dated 27.01.1998 granted permission. I have gone through the said letter, wherein the Chief Officer of the Board has given certain clarifications on the point raised by the tenement holders. He has mentioned that each plot will be demarcated after allotment of tenements, and thereafter, the tenement holders may construct the compound wall at their own expenses and if the allottee intends to get work done through the Board, they should intimate it in writing and deposit the amount of construction with the Board.

6. The counsel for the respondent No.1 submits that the Chief Officer is not empowered to grant permission and it is to

be granted by the Authority appointed under Section 3 of the MHADA Act.

7. I need not to go into this controversy. Suffice it to say that even if, the letter of Chief Officer is to be treated as a permission, the construction ought to have to be in accordance with the specifications of construction, which can only be approved by the Board. The petitioners have failed to show and also to place on record any sanctioned drawing of construction. Having not done so, the argument that the construction has been done in accordance with the specification is incorrect. Further, I find substance in the reasoning assigned by the First Appellate Authority that without affording opportunity to cross-examining or objecting the statements made by the Executive Engineer and the Chief Officer as regards the status of construction of compound wall, the respondent No.3 could not have reached the conclusion that the construction was in accordance with the norms. Thus, it is apparent that the construction of compound wall by the petitioners is not in accordance with the specifications of

construction as approved by the Board.

8. At this stage, the counsel for the petitioners submits that if, the specifications of construction of compound wall and also demarcation of the plots, the holders of the tenements can construct the compound wall in accordance with the approval so granted by the respondent No.3 – the Competent Authority. The request being reasonable is accepted considering the fact that the petitioners intend to construct the compound wall towards safety, to prevent theft and menace of street dogs. However, I do not find any reason to upset the finding of the respondent No.4.

9. Accordingly, the writ petitions are **dismissed**.

10. The respondent No.1 shall take steps to demarcate the plots of each tenement holders and to furnish a specification of construction within one month from today, if there is no legal impediment. The petitioners shall then construct the compound wall accordingly. The respondent No.1 shall also verify whether the construction of compound wall carried by the petitioners is in accordance with the specifications/norms

of the construction of compound wall and if the same could be approved, it shall issue appropriate directions accordingly.

11. In the event, the petitioners' construction is found to be not in accordance with the specifications or that the same is beyond permissible norms, the respondent No.1 shall issue directions to remove the same within the stipulated time and the petitioners shall accordingly remove the construction as directed.

12. The petitions are disposed of in above terms.

JUDGE