



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

**WRIT PETITION NO.6370/2023**

Smt. Jubeda Begum Aziz Khan (dead) thr. her Legal Heirs Naseem Khan s/o Aziz Khan and Ors. Vs. First Appellate Authority/Additional Collector, Nagpur and Ors.

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

Court's or Judge's orders

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Mr. K. R. Gour, Advocate for petitioner.  
Mr. H. D. Futane, A.G.P for respondent No.1.  
Mr. J. B. Kasat, Advocate for respondent Nos. 2 to 5.  
Mr. P. Malviya, Advocate for respondent No.6.

**CORAM : ANIL L. PANSARE, J.**  
**DATE : OCTOBER 10, 2024**

The petitioner is aggrieved by order dated 24.02.2023, passed by respondent No.2 – Competent Authority under Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971, (hereinafter referred to as the, “Act of 1971”) as also order dated 27.07.2023, passed by First Appellate Authority i.e. respondent No.1.

The grievance of the petitioners is that notice dated 03.01.2022, issued by the respondent No.2 – Competent Authority to the petitioners calling upon them to show as to why structures under question, admeasuring 744.64 Sq.Mts. be not demolished, being unauthorized. According to the petitioners, the structures were in existence prior to 01.01.2000 and, therefore, are protected structures under Section 3Z-(1) of the Act of 1971.

There is no dispute that, if the structure is in existence prior to 01.01.2000, the protection under the provisions of the Act of 1971 is available. The question, however, is whether the structures were in existence prior to 01.01.2000.

Section 3Z-(1) provides that the Competent Authority may, upon complaint from any person or report from its office or police or any other record or information in its possession, if is satisfied that any unauthorised or illegal dwelling structure, etc. has been erected after 01.01.2000 within the area of its jurisdiction, without obtaining necessary permission under the relevant laws, it shall serve upon the owner of the unauthorised structure or any person claiming interest therein or a person in occupation of such structure, a written notice to show cause as to why order of demotion should not be made. Once the notice is issued, owner or occupier etc. of unauthorised structure has to appear before the competent authority within 24 hours and produce necessary documents to prove that requisite statutory permission for construction has been duly obtained by him. This permission will naturally be required only if structure is made after 01.01.2000.

In the present case, the petitioner has come up with a case that the structures were in existence prior to 2000. In support, he has referred to notice dated 06.03.1984 issued by the Nagpur Municipal Corporation, Tax Department. The notice refers to the house number 4260/86-A/1, Ward No. 20, which is also referred to in the impugned notice. Accordingly, the counsel for the petitioners submits that the structures were in existence prior to 01.01.2000.

As against, the counsel for respondent – Corporation submits that the said notice was issued for tax assessment and the construction was then admeasuring around 240 Sq. Ft. He submits that the construction has been now extended to about 7500 Sq. Ft. Thus, according to him, the notice dated 06.03.1984 will be of no help to the petitioner.

I have gone through the material placed before me to find that despite giving number of opportunities, the petitioners failed to produce any document before the respondent No.2 – competent authorities to show that the structures under question were in existence prior to the year 2000. The petitioners, however, have placed before the First Appellate Authority, notice dated 06.03.1984 to show existence of structures, which according to the counsel for the respondent-Corporation, was admeasuring 240 Sq. Ft. at the relevant time and has been extended to about 7500 Sq. Ft. after 01.01.2000. These details were, however, not placed before the respondent No.1. There is thus no finding on the issue of extension of structure. Further, the First Appellate Authority has not even considered the notice dated 06.03.1984. In a given case, the First Appellate Authority may not permit production of documents at the appellate stage, but some order ought to be passed.

Respondent No.1 - Appellate Authority has only noted submissions made by the petitioners' counsel that notice dated 06.03.1984 was referred by him in support of his contention that the structure existed prior to 2000. However, the

respondent No.1 – Appellate Authority has neither accepted nor rejected the said argument. Further, and as argued by the counsel for the respondents, if the structure was admeasuring 240 Sq. Ft., at the relevant time, necessary documents ought to have been placed before the First Appellate Court by the Nagpur Municipal Corporation. It will be only then that there could be a finding, after recording satisfaction, that the structure under question which admeasures around 7500 Sq. Ft. has been constructed after the year 2000 as complained by the police and respondent No.6. The First Appellate Authority, having not given any reason to discard notice dated 06.03.1984 and since other factual aspects require consideration by it, I deem it necessary to remand the matter back to consider the same afresh.

Accordingly, the writ petition is partly allowed. Impugned order dated 27.07.2023 passed in Slum Appeal Case No.8/Slum/Nagpur/2022-2023 is quashed and set aside. The appeal is restored on the file of respondent No.1 for consideration afresh, in accordance with law and what has been stated in the body of the order. Parties shall appear before the First Appellate Authority on 21.10.2024. The parties are at liberty to produce relevant documents before the First Appellate Authority for appropriate decision.

The writ petition is disposed of. No order as to costs.

**(Anil L. Pansare, J.)**