



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

WRIT PETITION NO.2601/2024

PETITIONER : Vishwabhushan Bharat Ratna Parampujya
Dr. Babasaheb Ambedkar Sarvajanik Jayanti
Utsav Samiti, Gondia. Through
its President – Amit Devajirao Bhalerao,
Aged about 46 years, Occu : Social Work,
R/o Single Toli, Gondia, Tq. And District Gondia.

...VERSUS...

RESPONDENTS : 1. The Collector, Gondia.

2. Municipal Council, Gondia,
Through its Chief Officer, Gondia.

3. Maa Shitalamata Seva Samiti,
A Registered Trust bearing Regn. No.F-96,
Gondia – through its Secretary -
Jayant Shukla, R/o Gautam Nagar, Gondia.

Mr. M.P. Khajanchi, Advocate for petitioner
Ms D.I. Charlewar, AGP for respondent No.1
Mr. M.I. Dhattrak, Advocate for respondent No.2
Mr. P.M. Pande, Advocate for respondent No.3

CORAM : SACHIN S. DESHMUKH, J.
DATE : 13/08/2025

ORAL JUDGMENT :

1. Heard. Rule. Rule made returnable forthwith. By consent of the parties, the petition is heard finally at the stage of admission.
2. The challenge raised in the present petition is to the order rendered by the District Collector, allowing the proceedings under Section 308 of the Maharashtra Municipal Councils, Nagar Panchayats

and Industrial Townships Act, 1965 (for short hereinafter “Act of 1965”) presented by the respondent No.3 on the solitary ground that it was not open for the Collector to try and entertain the proceedings at the instance of the respondent No.3 as same is in contravention Section 308 of the Act of 1965. The objection to resolution of the Council or any Committee shall be initiated at the instance of the Chief Officer only, who shall send it to the Collector for suspension of execution of such resolution or prohibition of doing thereof within period of three days from the receipt of the said resolution, thereafter the Collector shall decide on such proposal within thirty days.

3. The Municipal Council passed resolution on 08/07/2021. It was resolved to construct Samaj Bhawan from and out of the funds made available by the State Government in a Scheme under Dalit Vasti Sudhar Yojana. Eventually technical sanction was also accorded by the department of town planning on 11/03/2022. Preceded by the resolution and the technical sanction eventually administrative sanction was also accorded by the Collector on 16/03/2022. Thereafter, e-tender was also floated by Chief Officer and the bid of successful bidder has been accepted culminating into issuance of work order on 24/05/2022.

4. At that juncture the respondent No.3 on 30/05/2022 presented an application under Section 308 of the Act of 1965 before the Collector requesting to set aside the said resolution of construction

of Samaj Bhawan. Petitioner objected in the said proceedings by presenting an application for intervention. An objection was put forth in the wake of amendment to Section 308 of the Act of 1965 that same cannot be entertained at the instance of the individual entity like the respondent No.3. Reliance was also placed on the verdict of this Court in Writ Petition No.2219/2021 wherein it has been held that the proceedings under Section 308 has to be essentially in accordance with the mandate of Section 308 of the Act of 1965. As such, requested not to entertain the proceedings, however, ignoring same, the District Collector has passed the order under challenge directing the Chief Officer to consider the issue and decide the same, in the process, further directed to maintain the *status quo* in relation to the subject plot.

5. Learned Counsel for the petitioner contends that it was not open for the respondent – Collector to ignore the maintainability of application under Section 308 of the Act of 1965 at the instance of respondent No.3 as same is not in accordance with mandate of said section.

6. In support of the contention, learned Counsel for the petitioner has placed heavy reliance on the judgment Hon'ble Apex Court in the case of *Varshatai w/o Sh Sanjay Bagade Vs. State of Maharashtra through its Secretary, Ministry of Law and Judiciary*,

Mantralaya, Mumbai and others etc., 2025 AIR SC 2200, more particularly paragraph Nos.9 to 11, which read as under :-

“9. Sub-section (1) of Section 308 was amended in the year 2018. Prior to this amendment, if the Collector was of the opinion that the execution of any order or resolution of a Council was likely to cause injury or annoyance to the public and may lead to a breach of peace, or was unlawful, he had the powers to suspend its execution or prohibit its enforcement. The Collector could even exercise such power suo motu in an appropriate situation. All the same, subsequent to the amendment in sub-section (1) of Section 308 in the year 2018, it can be done only when such a resolution is sent by the Chief Officer before the Collector.

10. Section 308(1) of 1965 Act before and after the amendment reads as under:

<i>Old</i>	<i>New</i>
<i>“Section 308. Powers to suspend execution of orders and resolutions of Council on certain grounds -</i> <i>(1) If, in the opinion of the Collector, the execution of any order or resolution of a Council, or the doing of anything which is about to be done or is being done by or on behalf of a Council, is causing or is likely to cause injury or annoyance to the public or is against public interest or to lead a breach of the peace or is unlawful, he may by order in writing under his signature suspend the execution or prohibit the doing thereof,”</i>	<i>“Section 308. Powers to suspend execution of orders and resolutions of Council on certain grounds -</i> <i>(1) If the Council or any Committee resolves contrary to provisions of this Act or any other law, or rules, bye-laws, or the Government directions, then it shall be the responsibility of the Chief Officer to send it to the Collector for suspension of execution of such a resolution or prohibition of doing thereof, within the period of three days from the receipt of the said resolution. The Collector shall decide on such proposal within the period of thirty days from the date of receipt of such proposal....”</i>

(Emphasis provided)

11. It is therefore clear that, after the amendment, the Collector can exercise powers only when the Chief Officer of the Municipal Council brings it to the Collector's notice that the Municipal Council has passed a resolution contrary to the provision of the 1965 Act or any other law, rule or bye-laws. In such a situation, the Chief Officer of the Municipal Council alone has the responsibility to move an appropriate application before the Collector in terms of Section 308(1) of the 1965 Act and more importantly it is only on an application moved before the Collector by the Chief Officer of the Municipal Council that the powers can be exercised by the Collector under the amended Section 308 of 1965 Act. In this case, the application was admittedly not made by the Chief Officer of the Municipal Council but by the appellant, which should not have been entertained in the first place."

7. As such, it was not open for the Collector to try and entertain the proceedings under Section 308 of the Act of 1965 at the instance of the respondent No.3, in the wake of mandate of Section 308, which permits only the Chief Officer to seek suspension of execution of resolution or prohibition of doing thereof to the Collector within three days from the receipt of the said resolution. Admittedly, the resolution rendered by the Municipal Council is dated 08/07/2021. The Chief Officer after receipt of the same within three days has neither initiated the proceedings nor the Collector has *suo motu* initiated any enquiry in that regard.

8. Therefore, the mandate of Section 308 of the Act of 1965 is completely breached, controverted and defied by the Collector while entertaining the application under Section 308 of the Act of 1965. The Collector was under obligation to comply the statutory mandate as a

particular thing required to be done in a particular manner, following a particular procedure, shall be done in the same manner following the provisions of law without deviating from the prescribed procedure in the wake of the judgment of the Hon'ble Supreme Court in the case of ***Cherukuri Mani W/o Narendra Chowdari Vs. Chief Secretary, Government of Andhra Pradesh and others, (2015) 13 SCC 722.***

Relevant portion in paragraph No.14 of the said judgment reads as under :-

“14. Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure.”

9. In the light of the peculiar facts stated hereinabove, it was not open for the respondent No.1 to entertain the application under Section 308 of the Act of 1965 at the instance of the respondent No.3 and render the impugned direction. Nevertheless the resolution was passed in the year 2021 thereafter technical vis-a-vis administrative sanctions have been accorded by the competent authority, which has culminated into issuance of tender process floated by the Chief Officer, eventually culminating into issuance of work order.

10. Thus, the Chief Officer has not raised any objection at any point of time rather the Chief Officer has time and again endorsed the

said resolution as the same culminated into issuance of work order. However, the Collector in ignorance of the fact of the said resolution being acted upon at the instance of the Chief Officer has passed the impugned direction. As such, the Collector has committed serious error while entertaining the proceedings under Section 308 at the instance of respondent No.3. Therefore, the order under challenge is unsustainable and liable to be quashed and set aside. Accordingly, the writ petition is allowed in terms of prayer clause (a). Rule is made absolute in the aforesaid terms. No order as to costs.

(SACHIN S. DESHMUKH, J.)

Wadkar