



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

WRIT PETITION NO. 5739 OF 2019

Shri Hanuman Mandir Trust, through its Trustee,
Roopnarayan s/o Lumchand Tiwari (Sharma)

.. Petitioner.

Versus

The State of Maharashtra, through its Secretary,
Revenue and Forest Department, Mumbai and ors.

...Respondents.

Mr. Anil Mardikar, Senior Advocate a/b Mr. N. S. Khandewale, Advocate for petitioner.
Mr. A. I. Damle, Assistant Government Pleader for respondent nos. 1, 3 and 4.
Mr. S. M. Puranik, Advocate for respondent no.2.
Mr. Pratik D. Khedikar, Advocate a/w Mr. G. A. Kunte, Advocate for respondent no.5.

CORAM :- NITIN W. SAMBRE AND MRS. VRUSHALI V. JOSHI, JJ.
DATE :- 17th MARCH, 2025

P. C.

Heard.

2. Pursuant to the mandate provided under the Government Resolution dated 05.05.2011, the petitioner was proceeded against, which led to the issuance of the impugned notice dated 16.07.2018 by the respondent-Revenue Authority, i.e. the Tahsildar, so also by the Assistant Commissioner, Nagpur Municipal Corporation, dated 27.07.2018 to establish the right of the petitioner to continue occupying the premises in question, failing which the entire structure would be removed therefrom.

3. It is the case of the petitioner that similar proceedings were initiated before issuance of the orders/notices impugned pursuant to the show cause notice dated 11.12.1995 issued by the Revenue Authority. The petitioner claims to be occupying the land in question for the purpose of Temple under the *sanad*. The petitioner has accordingly placed on record sanctioned map and copy of *sanad*, thereby demonstrating its right to continue to occupy the premises in question.

According to the petitioner, though the order passed by the Collector dated 19.06.1998 of eviction was confirmed in Appeal by the Additional Commissioner, Nagpur Division, same was set aside by Secretary and

Special Executive Officer (Appeals), Revenue and Forest Department, Mumbai, on 08.08.2002 and a remand order was passed. Even today, pursuant to the show cause notice dated 11.12.1995 issued by the Collector, the proceedings are pending consideration.

It is further claimed that the petitioner has the right to occupy the premises in question pursuant to *sanad* granted by the State Government on 06.06.1952, which is produced at Annexure-XI. So also, it is brought to our notice that the structure occupied by the petitioner was duly sanctioned by the Competent Authority, i.e. the Building Department of the Municipal Committee, on 18.12.1934.

4. In this background, Mr. Mardikar, learned Senior Counsel appearing for the petitioner would urge that the impugned notices/communications ought not to have issued directing the petitioner to remove the structure which the petitioner is occupying.

In addition to above, his contentions are, the petitioner's appeal against the alleged eviction is already pending before the State Government as can be inferred from the communication dated 05.09.2018 issued by the Commissioner, Nagpur Municipal Corporation, who is heading the Committee constituted, so as to identify the illegal structures to be demolished or relocated. In this background, Mr. Mardikar, submits that the impugned communications/notices are not sustainable.

5. As against above, the learned counsel appearing for the respective respondents would submit that the petitioner has an alternate remedy as the petition involves disputed question of facts.

Apart from above, our attention is invited to the various notices and orders passed by the authorities directing removal of the structure. As such, a prayer is made for dismissal of the petition.

6. We have considered the rival claims.

7. Under the *sanad* referred above, the State Government has permitted *vahiwat* of the land to the extent of one mentioned in *sanad*

dated 06.06.1952 over which a structure was already existing and sanctioned as per Building Permit dated 01.02.1935. The petitioner has placed on record sanctioned map to that effect.

8. In this background, it has to be inferred that while issuing the impugned communications/notices both the respondents have not considered the aforesaid issue. Rather, they have proceeded to declare the petitioner as an illegal occupant and encroacher of the premises in question.

9. That being so, we deem it appropriate to allow the petition thereby quashing the impugned notices/communications dated 16.07.2018 and 27.07.2018.

We direct the petitioner to appear before the Tahsildar on **07.04.2025**, with all the relevant documents referred hereinabove in addition to the documents which he has already submitted as is reflected in the communication address to the Tahsildar dated 26-27.07.2018.

We further direct the Tahsildar to hear the petitioner and pass appropriate order in the matter within a period of eight weeks thereafter.

10. The writ petition stands allowed in the aforesaid terms. There shall be no order as to costs.

(MRS.VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)

Andurkar.