



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

WRIT PETITION NO.6713 OF 2023

Shri Pradip s/o Gopalrao Sapkal,
Aged about 63 years,
Occupation-Retired.
R/o. Near Kacheshwar Mandir,
Sudam Road, Itwari, Nagpur.

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Petitioner

..Versus..

- 1) The State of Maharashtra through its Secretary, Urban Development Department, Mantralaya, Mumbai-32.
- 2) The Nagpur Municipal Corporation through its Commissioner, having Office at Civil Lines, Nagpur.
- 3) The Sub-Divisional Engineer, Zone No.6, Gandhi Zone, N.M.C. Nagpur.
- 4) Competent Authority (Slum) Nagpur Municipal Corporation, Civil Lines, Nagpur.
- 5) The Additional Collector, Nagpur, District-Nagpur.
- 6) Makrand s/o Madhusudhan Sapkal, Aged about 35 years, Occu. Private R/o. Near Krida Chowk, Sakarkardara, Nagpur.

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Respondents

Shri Madhur A. Deo, Advocate for Petitioner.
Shri S.B. Bissa, AGP for Respondent Nos.1 and 5.
Shri J.B. Kasat, Advocate for Respondent No.2 to 4.
Ms. S.P. Chavhan, Advocate for Respondent No.6
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CORAM : PRAVIN S. PATIL, J.
RESERVED ON : 16.09.2025.
PRONOUNCED ON : 24.09.2025.

JUDGMENT

1. Heard. **Rule.** Rule is made returnable forthwith.
2. The petitioner, who is residing in slum area, assailed the order passed by respondent no.5, dated 5.9.2023 in Slum Appeal No.21/Slum/Nag/2018-19 in present petition alleging that without considering factual and legal position, his appeal has been dismissed.
3. Petitioner along with the challenge to the order of respondent no.5 also prayed that writ of mandamus directing the respondent no.2 to issue public notice under Rule 9 of the Maharashtra Town Planning (Compounding Structures) Rules, 2017 (hereinafter referred to as 'Rules of 2017') and considered the application filed by the petitioner for compounding of structure. However, the prayers (A) and (B) made in the petition were not pressed by the petitioner during the pendency of present petition and

same is recorded in the order dated 23.4.2025. Hence, challenge in the present petition is now restricted to prayer clause (C) and (D) only.

4. Before advertng to the merits of the matter, it will be necessary to state the few facts of the matter which are not disputed in the present petition.

5. The petitioner is occupying the house bearing Corporation No.134 situated at Ward No.28, near Kacheshawar Mandir, Sudam Road, Itwari, Nagpur. The said property falls in the slum area. According to petitioner, he is residing in the said house property before year 2000 and to justify his submission placed on record the copy of property card and copies of tax which he has paid to the respondent no.2.

6. The submission of the petitioner that on 28.6.1999 and 7.8.2019, he had made applications to the office of Deputy Engineer, Zone-3, Nagpur Municipal Corporation, to grant permission for repair of his house, but same were not looked into. Hence, by communication dated 19.11.1999, he has informed the Deputy Engineer, Zone-3, Nagpur that as there is no response to his application treating it as a deemed permission, started the repair of his house. Along with application, the petitioner has also enclosed

the building plan of the plot to the authority.

7. It is his submission that after the period of 19 years, he received the show cause notice dated 8.4.2019 from the respondent no.4 under Section 3-Z (1) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter referred to as 'Act of 1971') alleging that construction made by petitioner over suit property is illegal.

8. The petitioner on 6.5.2019 as permissible under Section 3-Z(1) of the Act of 1971 raised objection to the notice issued by the respondent no.4. The said objection was duly acknowledged by the respondent no.4.

9. It is stated by the petitioner that some officials of the respondent no.1, without considering the fact that the objection has been raised to the notice, approached to his house stating that as per Notice dated 8.4.2019 they are intending to demolish the constructed part of the house. Therefore, on same day i.e. 6.5.2019, the petitioner has preferred appeal under Section 35 (1) of the Act of 1971 before the learned Additional Collector, Nagpur.

10. The learned Collector, after hearing the petitioner, by his order dated 5.9.2023, rejected the appeal by holding that the

appellant failed to demonstrate that construction which is alleged by the notice is before of year 2000. Being aggrieved by the same, the petitioner approached to this court by way of present petition.

11. In response to the notice of this court, the respondent nos.2 to 4 filed their affidavit on record. It is their submission that bare perusal of notice dated 8.4.2019 made it clear that respondent no.4 was not intending to remove the entire house, according to notice, part of ground floor and the part of first floor which was constructed after 1.1.2000 being without permission only that part was directed to be demolished in the matter.

12. It is further submitted that as per the provisions of law, after issuing the notice, the aggrieved person has right to raise the objection. If such objection is raised, then competent authority is required to take decision over the said objection. If the decision of the competent authority goes against the person, then he can prefer the appeal under Section 35 of the Act of 1971. However, in the present case, the petitioner without waiting for the decision of the competent authority on the objection raised by him, on same day i.e. the date of which he has raised objection, filed the appeal before the Additional Collector, Nagpur. Hence, his appeal itself is not tenable, because the competent authority did not decide the objection raised

by the petitioner.

13. It is stated that the competent authority as per the Act of 1971 can decide the objection raised by the petitioner and petitioner after the decision on his objection can always at liberty to file the statutory appeal in the matter.

14. I have gone through the entire record and the submissions made by the respective counsel in the matter.

15. In the present petition, the issue involved is, whether the learned Collector was right in exercising the powers under Section 35 (1) of the Act of 1971, particularly when the objection over the notice raised by the petitioner was already pending before the competent authority.

16. To consider the issue involved in the present petition, it will be relevant to reproduce Section 3-Z (1) of the Act of 1971 which reads as under :

3Z-1. Powers of Competent Authority to demolish unauthorised or illegal dwelling structures.—

(1) Where a Competent Authority, upon a complaint from any person or report from its officer or police or any other record or information in its possession, is satisfied that any unauthorised or illegal dwelling structure or part thereof has been constructed, or any addition to the existing structure as recorded on photo-pass, has been erected, after the [1st January

2000], within the area of its jurisdiction, without obtaining necessary permissions required to be obtained in that behalf under the relevant laws, of the concerned statutory authorities, it shall forthwith serve upon the owner of such unauthorised or illegal dwelling structure or any other person claiming an interest therein and also upon the person who is in occupation of such structure, a written notice to show cause, within twenty-four hours as to why an order of demolition of the structure should not be made.

(2) If the owner of such unauthorised or illegal dwelling structure or any other person claiming an interest therein or the occupier of such structure is, by any reason whatsoever, not available for serving or receiving the notice, such notice shall be affixed at a conspicuous place on such structure, and it will be deemed to be due service of notice on the concerned person or persons.

(3) The person or persons upon whom the notice has been served under sub-section (1) or (2), as the case may be, shall, within twenty-four hours appear before the Competent Authority and produce or cause to be produced by his agent or representative, the necessary documents to prove that the requisite statutory permission for construction, reconstruction, addition or extension, as the case may be, has been duly obtained by him and that the construction, re-construction, addition or extension is not unauthorised or illegal.

(4) The Competent Authority shall, thereupon, on scrutiny of documents, if any, produced by such person, on being satisfied that the dwelling structure, addition to it or extension thereof, is unauthorised or illegal, forthwith make an order, in writing, for demolition of such structure immediately, and in any case not later than twenty-four hours from the time of making of the order, by such person:

Provided that, if the owner or as the case may be, the person claiming an interest in the structure or the

occupier of such structure or his agent or representative fails to appear before the Competent Authority, within the time specified in the notice, the structure shall be treated as unauthorised or illegal and the Competent Authority shall pass an order for its demolition.

(5) Where an order of demolition of such unauthorised or illegal dwelling structure is made under sub-section (4) or the proviso thereto, the owner of the structure or any other person claiming an interest therein or the person in occupation of such structure shall, immediately demolish that structure within twenty-four hours from the passing of the demolition order and if, the concerned person who is ordered to demolish the structure, fails to demolish such structure within that time, the Competent Authority shall forthwith demolish the structure and remove the debris with the help of its staff and the police officer from the area where such structure is situated, and sell the debris of such demolished structure to recover the expenses incurred by the Competent Authority for such demolition and removal of debris. If the expenses incurred are not satisfied out of the proceeds of sale of the debris of such structure, the same shall be recoverable from the owner of the structure or any other person claiming an interest therein or from the person who was in occupation of such structure, as arrears of land revenue.

17. The bare perusal of the provision clarify the fact that where a competent authority is satisfied that any unauthorized or illegal dwelling structure or part thereof has been constructed after 1.1.2000, is required to issue a written notice to show cause, within twenty-four hours as to why an order of demolition of the structure should not be made. It is further provided that the person to whom

notice has been served within twenty-four hours has to appear before the competent authority and state the reasons by raising objection as to how the action is illegal. After receipt of such objection, the duty is cast upon the competent authority to make scrutiny of the documents produced by such person and after his satisfaction, appropriate order is to be passed in the matter.

18. In the present petition, it is clear from the record that the petitioner at one hand i.e. on 6.5.2019 raised objection to the notice received to him under Section 3-Z(1) of the Act of 1971 and on the other hand, on 8.5.2019 preferred appeal before the Additional Collector, Nagpur under Section 35 (1) of the Act of 1971. Hence, it is clear that the petitioner did not wait for the decision on the objection raised by him before the competent authority and in a very haste filed the proceeding before the Additional Collector, Nagpur.

19. It is though permissible under Section 35 of the Act of 1971 that aggrieved person can file appeal even against the notice issued by the authority, however, while exercising such powers, it is expected from the authority to verify the factual aspect in the matter. According to me, when objection was raised by the petitioner to the notice under Section 3-Z (1) of the Act of 1971 as permissible under the provisions of law and same was not decided, the learned

Additional Collector should not have entertained the appeal. He ought to have first satisfied himself about the details of objection raised by Petitioner from respondent no.4 and then could have proceeded in the matter. But there is nothing on record to show that this exercise was undertaken by learned Collector before deciding the appeal.

20. In the circumstances, I am of the confirmed opinion that the impugned order passed by the learned Collector is by exceeding his jurisdiction and, therefore, same deserves to be quashed and set aside.

21. In the present petition, admittedly the objection raised by the petitioner to the notice received to him under Section 3-Z (1) of the Act of 1971 is till date not decided by the competent authority on its own merits. Therefore, it will be expedient to direct the competent authority to decide the objection raised by the petitioner as per the mandate of Section 3-Z (1) of the Act of 1971. In view of above, I proceed to pass the following order :

O R D E R

(1) The petition is partly allowed.

(2) The order passed by Respondent no.5-Collector, Nagpur in the capacity of Appellate Authority of Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 is

hereby quashed and set aside.

(3) The Competent Authority (Slum), Nagpur Municipal Corporation is hereby directed to decide the objection raised by Petitioner to the show cause notice received by his office on 6.5.2019 on its own merits, within a period of three months.

(4) The petitioner is directed to appear *suo motu* before the Competent Authority (Slum) i.e. Respondent No.4 on **01.10.2025**.

(5) The Competent Authority is further directed to decide the objection raised by the petitioner independently by following due procedure of law without influence of the order passed by the learned Collector in Appeal No.21/Slum/Nag/2018-19 dated 5.9.2023 as well as the order passed by this court.

(6) All the issues are kept open.

(7) It is made clear if any adverse order is passed by Competent Authority, the same shall not take its effect for a period of 7 days.

(8) No order as to costs. Rule is above terms.

(Pravin S. Patil, J.)