

MHNG020035542015 Presented on : 19.10.2015



Registered on : 21.10.2015

Decided on : 01.07.2026

Duration : Y. M. D.
10 08 13**IN THE COURT OF 21st JT. CIVIL JUDGE SENIOR DIVISION,
NAGPUR**

(Presided over by Mr. Pritesh Deshpande)

Reg. Civil Suit No. 201226 of 2015**Exhibit No. 47/A****Shri. Ramchand S/o Karamchand
Kungwani,**

Aged about 62 years, Occu. Business,

R/o. Lashkaribagh Ambedkar Marg, **... Plaintiff**
Nagpur.**VERSUS****The City of Nagpur Corporation,
Maharashtra Municipal Commissioner,
Nagpur, Through it's Municipal
Commissioner, Civil Lines, Nagpur.****... Defendant****Claim :-** Suit for declaration and perpetual injunction.

Ld. Advocate for plaintiff : Shri. S. B. Chaurasia

Ld. Advocate for defendant : Shri. R S Giripunje

J U D G M E N T(Decided on 01st July 2026)

This suit is filed by the relief of declaration and perpetual injunction.

2. The property i.e. mobile shopee and lavatory situated at Corporation House No. 73/1, Ward No. 54, Dr. Ambedkar Marg, Lashkaribagh, Nagpur more particularly described in para No.2 of the plaint is subject matter of the present suit and for the sake of brevity and the convenience hereinafter referred as the “suit property”

Plaintiff’s case may succinctly be stated as under:

3. Plaintiff is the owner of the suit property. He has been peacefully running a mobile shop in the same without any disturbance to others. Plaintiff has been regularly paying corporation tax for the said premises. Subordinates of defendant without any right issued notice U/s. 55 of the Maharashtra Regional Town Planning Act (hereinafter referred as MRTP Act) vide letter No. NMC/AC-10/MRTP/Section 55/125/PWD/TR dtd. 16.06.2015 in the name of Milind Mankar and thereby directed him to pull down the suit property within 15 days. The issuer of the notice are not competent persons or authorities to issue such a notice. Mr. Milind Mankar has nothing to do with the suit property. Plaintiff is the owner of the same. The notice issued to demolish the property is illegal, unwarranted, baseless, malafide, factually incorrect and against the principle of natural justice. It is issued by subordinates of defendant on behest of person’s vested working interest against the plaintiff who intend to pull down the structure. After the knowledge of notice, plaintiff immediately approached defendant and requested

them to withdraw the notice. Plaintiff also issued legal notice dtd. 28.07.2015 to defendant and requested them to withdraw the notice. Despite the same, defendant has been giving threat to initiate the action against plaintiff and therefore present suit is filed.

4. Defendant appeared in response to the suit summons, filed the written statement at Exh.18 and opposed the suit claim. It is submitted by defendant that the suit is not maintainable for want of jurisdiction. The Hon'ble Bombay High Court, Nagpur Bench passed an order in P.I.L. No. 65/2012 dtd. 15.10.2015 thereby directed N.M.C. to issue public notice and remove illegal constructions in parking spaces. Mere payment of Corporation Tax would not protect illegal construction. Notice issued by defendant is valid. The notice is for removal of unauthorized construction of the mobile shoppe. As a matter of record, Mr. Milind Mankar is the President of a scheme where suit property is situated. Notice is issued after due inspection. Mere issuance of notice does not create cause of action for present suit. Plaintiff has no *locus standi*. Hence, prayed to dismiss the suit.

5. Considering rival pleadings of both the parties, my Ld. Predecessor framed issues at Exh.26. Findings on the same for the reasons follows :-

<u>Sr.</u> <u>No.</u>	<u>Issues</u>	<u>Findings</u>
1.	Whether plaintiff proves that notice dated 16.06.2015 issued by defendant is illegal?	No
2.	Whether the plaintiff is entitled for declaration as prayed ?	No

3.	Whether the plaintiff is entitled for perpetual injunction as prayed ?	No
4.	What order and decree ?	Suit is dismissed

Admitted facts :-

6. Existence and description of the suit property, issuance of notice, payment of corporation tax by plaintiff are admitted facts.

Submissions by plaintiff :-

7. It is submitted by Ld. Advocate for plaintiff Shri. S.B. Chaurasiya that, notice issued by defendant is grossly illegal. Plaintiff should have been given one month time in the notice, however, only 15 days time is given which is against very basic notion of settled law. Plaintiff has been regularly paying corporation tax. There is no need of demolition of structure. It may be regularized. Defendant failed to step into the witness box and therefore adverse inference may be drawn against the defendant. Notice is illegal in itself. It cannot be acted upon. Defendant has been willing to illegally destroy the suit property. Hence, prayed for allowing the claim and pass a decree in the matter accordingly. Plaintiff relied upon following citations-

S.N.	Name of parties	Citation
1.	Kishor Telang Vs. Municipal Commissioner of Nagpur	2015(4)Mh.L.J. 836

Submissions by defendant :-

8. It is submitted by Ld. Advocate for defendant Shri. R.S. Giripunje that notice issued by defendant is legal and proper. Plaintiff

is not opposing the fact that the suit premises is an illegal construction. The burden of proof is on plaintiff. No adverse inference can be drawn against defendant. Suit is devoid of merit. Hence, prayed to dismiss the suit.

Plaintiff's evidence :-

9. In support of the suit claim, plaintiff examined himself as PW.1 at Exh.33. He reiterated his pleadings on oath. Plaintiff proved his tax receipt Exh.31, sanctioned building permit Exh.32, notice Exh.36, postal receipts Exh. 37 and 38, return envelope Exh.39, notice copy Exh.40, notice issued by corporation for demolition i.e. impugned notice Exh.41. This witness is thoroughly cross examined by defendant. In his cross examination, he admitted that he has not filed on record sanctioned plan, sale deed of the suit property. He admits that Exh.32 is in the name of Sheela Developer. He is a partner in the said firm. He admitted that the suit property is situated in the public place. He has given that property on rent. He is not aware whether the permission to construct the suit property was granted or not. He is not aware whether Milind Mankar was President of Karamshil Heights Society constructed over the plot in which suit property is situated. He admitted that he was developer of the said scheme and sold out flat.

Defendant's evidence :-

10. Defendant did not examine any witness in the matter.

*** REASONS ***

As to issue No. 1 to 3 :

11. Issue No.1 to 3 are interwoven with each other and in

order to avoid repetition, these three issues are taken for discussion together.

12. Plaintiff are claiming relief of declaration that the impugned notice is illegal and hence declaration alongwith consequential injunction is sought by plaintiff. He challenges impugned notice on various grounds like competence of issuing authority, principle of natural justice, possibility of regularization of the structure, lack of requisite time in the notice and overall form of the notice.

13. As defendant has not examined any witness, plaintiff submits that adverse inference may be drawn against him and the suit be decreed. At first, it is necessary to discuss on who burden of proof lies in this case. On this point, Section 101 of the Indian Evidence Act states,

Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

In addition to the same, Section 102 reads as under,

On whom burden of proof lies. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Defendant is a public authority. Plaintiff is claiming that notice is illegal. Had no evidence been adduced, plaintiff would fail in the suit. Hence, the burden of proof lies on plaintiff. The onus on

defendant may be discharged by documentary evidence.

14. At first, it is necessary to consider competence of the defendant for issuing the impugned notice. The notice at Exh.41 is issued in the name of Mr. Milind Mankar. It is signed by Assistance Commissioner of Municipal Corporation, Sub-divisional Engineer, Junior Engineer and Assistant Engineer of the corporation. It is specifically stated in the notice that there is a delegation of authority upon them and they are authorized to issue notice. Plaintiff is merely stating that the notice is not issued by the competent person without specifying who should have been the signatory of the notice. From over all contents of the notice, scheme of the act as well as form of the notice, I find signatory on the notice as competent persons to issue the said notice.

15. The notice is issued in the name of Mr. Milind Mankar who is President of Karamshil Heights Society. During the cross examination of plaintiff, he admitted that he is one of the developers of the said scheme. It is not disputed that Mr. Milind Mankar was not President of the said scheme. The intention behind issuing notice is to give sufficient time to remove the structure at its own. It is in the interest of principle of natural justice. Soon after the notice, plaintiff approached appropriate authority and made his representation against the notice. However, it was not entertained. Plaintiff has participated in the process. Therefore, no injustice is caused to plaintiff jeopardizing his rights of participation. It is admitted by plaintiff that the said structure is on a Government Land. He has let out that structure. Under such circumstance, I find that the form of notice is proper.

16. It is also admitted by plaintiff in his cross-examination that he has not been residing in Karamshil Heights and he has given suit property on rent. Defendant is a public authority. Under such circumstance, having regard to illustration (e) of Section 114 of the Indian Evidence Act, judicial and official acts are presumed to be regularly performed. The presumption creates inference in favour of defendant. Thus, the onus of rebutting such a presumption shifts on plaintiff. As plaintiff is not residing there, there are no chances of plaintiff knowing whether the inspection of premises were carried out or not. Nothing is mentioned in pleadings that plaintiff made due inquiry or enquiry about the same. Under such circumstances, plaintiff failed to re-shift onus again on defendant. Therefore, I find no substance in the submission that notice is issued in violation of principle of natural justice.

17. When the structure is unauthorized and in this case as admitted by plaintiff constructed on the Government Land, plaintiff cannot seek regularization as of right. Therefore, there is no right in favour of plaintiff to regularize the structure. Mere payment of corporation tax does not legalize the structure. It is admitted by plaintiff in his cross examination that he is not aware about sanction granted for construction of the suit property. He has not produced any documentary proof showing sanction in his favour. Hence, there is no dispute that the suit property is unauthorized illegal structure.

18. The important point raised by plaintiff regarding notice is time limit given in the notice. Before advertizing further on this point, it is necessary to look at Section 55 of Act with reads as under,

55. Removal or discontinuance of unauthorized temporary development summarily:- Notwithstanding anything hereinbefore contained in this Chapter, where any person has carried out any development of a temporary nature unauthorized as indicated in sub-section (2) of Section 52, the Planning Authority may by an order in writing direct that person to remove any structure or work erected, or discontinue the use of land made, unauthorisedly as aforesaid, within fifteen days of the receipt of the order; and if thereafter, the person does not comply with the order within the said period, the Planning Authority may request the District Magistrate or the Commissioner of Police, as the case may be, 198[or authorise any of its officers or servants,] to have such work summarily removed or such use summarily discontinued without any notice as directed in the order; and any development unauthorisedly made again, shall be similarly removed or discontinued summarily without making any order as aforesaid.

(2) The decision of the Planning Authority on the question of what is development of a temporary nature shall be final.

The important element of Section 55 is a structure should be a temporary structure. Plaintiff had all the opportunity to show that the structure is not a temporary structure and therefore his case does not fall within the domain of Section 55. Nothing is on record to show that the suit property structure is a permanent structure. This fact is not even stated in the notice sent by plaintiff to defendant. It is probable that notice to plaintiff is issued after due inspection. Therefore, there is a presumption that as the notice is issued U/s. 55

of the Act, the structure is a temporary structure. Under such circumstances, considering sub section (2), The decision of the Planning Authority on the question of what is development of a temporary nature shall be final. This subjective opinion is not rebutted by plaintiff and hence, it gets finality under the statute. Therefore, plaintiff's case falls under section 55 of the Act.

19. Plaintiff relied upon judgment of The Hon'ble Parent High Court in the matter of **Kishor Telang (supra)**. In the said matter, the impugned notice was issued U/s. 53 of the Act. What differentiates Section 53 from Section 55 of the Act is the nature of the structure. I have already stated that the structure is deemed to be a temporary structure. Section 55 starts with *non-obstante* clause. Hence, Section 55 overrides mandate given in other clauses of the same chapter in the Act. Section 55 contemplates 15 days notice which is there in notice at Exh.41. Therefore, with due respect to the law laid down by The Hon'ble Parent High Court in the matter of **Kishor Telang (supra)**, I respectfully state that the same is not helpful for plaintiff in this case.

20. Having regard to the above discussion, I find that impugned notice at Exh.41 is proper not only in its substance but also in its form. Pertinent to note that the said notice is issued in view of directions of The Hon'ble Parent High Court in P.I.L. No. 65/2012. It is bounden duty of not only executive but also the lower judiciary to give meanings to these directions in letter and spirit. Though there are findings in favour of defendant corporation, in view of the above observations and in order to properly implement directions given by the Hon'ble High Court, I find that Nagpur Municipal Corporation

should be more vigilant in such kind of litigation. Though not proved fatal to the defendant in this case, I reiterate that no witness is examined by defendant. Leaving scope for interpretation of conduct of the officers prosecuting this litigation to the prudence of the Municipal Commissioner, I find it fit to forward copy of this judgment to the Municipal Commissioner, Nagpur so that directions given by The Hon'ble High Court in P.I.L. No. 65/2012 will be effectively implemented and such cases would be prosecuted more diligently.

21. Considering above discussion, I find that notice issued by defendant is proper. Hence, I answer issue No.1 in negative. As issue No.1 is answered in negative, resultant, plaintiff is not entitled for the relief of declaration and injunction as prayed. With this, I answer issue No. 2 and 3 in negative.

As to issue No. 4:

22. Issue No.4 is regarding order in the suit. Before that, it is necessary to discuss about costs in the suit. Normally costs should follow the event and it is not the rule that costs should be left to be born to the parties. It is settled position of law that, a successful party must get the costs and loosing party should pay to the other side. I find no exceptional circumstances to depart from the general rule. By resorting to the general settled principle, I find it fit to direct plaintiff to pay costs of defendant. With this, I proceed to pass following order :

ORDER

1. Suit is dismissed.
2. Plaintiff to bear his own costs and pay costs of defendant.

3. Copy of this judgment be forwarded to the office of The Commissioner, Nagpur Municipal Corporation, Nagpur and be placed before him.
4. Draw decree accordingly.

(Dictated and pronounced in open Court. Signed copy is made available for both the parties immediately after pronouncing judgment)

Date: 01.07.2026

Place: Nagpur

(Pritesh Deshpande)

21st Jt. Civil Judge, Senior Division,
Nagpur.

∴ CERTIFICATE ∴

“I affirm that the contents of this P. D. F. file are word to word,
as per original Judgment/Order”.

Name of Steno	:	R.R. Borkar (Lonkar)
Name of the court	:	21 st Jt. C.J.S.D., Nagpur.
Date	:	01.07.2026
Order signed by presiding officer on	:	01.07.2026
Order uploaded on	:	01.07.2026

Sd/-

(R.R. Borkar)
Steno-Grade-III
21st Jt. C.J.S.D., Nagpur.