



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

Writ Petition No. 1349 of 2025

[Shivalamal s/o Nasumal Shughwani and ors. ..vs.. State of Maharashtra,
through its Secretary, Urban Development Department and ors.]

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

Court's or Judge's orders

Dr. (Mr.) R. S. Sundaram with Mr. Kabir Jhamb, Advocates for petitioners
Mr. H. R. Dhumale, AGP for the State
Mr. M. I. Dhatriak, Advocate for respondent no. 4
Mr. M. P. Khajanchi, Advocate for intervenor

CORAM : ANIL L. PANSARE J.

DATED : 12-03-2025

The petitioners shall make Mr. Pandurang Tonge, the person responsible for initiation of the proceedings against the petitioners as party respondent no. 5. Amendment be carried out forthwith.

Heard Dr. R. S. Sundaram, learned counsel for the petitioners, learned Assistant Government Pleader for respondent nos. 1 to 3, Mr. M. I. Dhatriak, learned counsel for respondent no. 4, on caveat and Mr. M. P. Khajanchi, learned counsel for intervener/newly added respondent no. 5.

The challenge is to order dated 7-3-2019 and 5-3-2025 passed by respondent no. 2 rejecting the revision and review preferred by the petitioners. The petitioners were required to approach revisional authority because vide order dated 6-11-2014, learned Collector, Yavatmal directed Municipal Council, Wani to vacate 160 shop blocks occupied by the petitioners and other such persons on the land bearing Sheet No. 19A, 19B and 19C. The order has been passed without giving opportunity of hearing to the petitioners. As such, the order of Collector recognizes the long standing possession for the petitioners in the sense there is mention in the order that vide resolution dated 8-6-2001, the persons like

the petitioners were directed to pay necessary charges to change ownership rights in their favour, the occupants, however, did not respond.

The petitioners filed the review before the Collector but to no avail. Thereafter, they approached the revisional authority under Section 318 of the Maharashtra Municipalities Act, 1965, who was pleased to dismiss the revision by the impugned order dated 7-3-2019. The petitioners preferred review against the said order which came to be dismissed vide order dated 5-3-2025.

Pursuant to the aforesaid order, respondent no. 4 – Municipal Council vide public notice dated 6-3-2025 has called upon the occupants of aforesaid blocks to vacate the blocks on or before 13-3-2025.

During the course of hearing, Mr. M. I. Dhatri, learned counsel for respondent no. 4, on caveat, made several attempts to divert the focus by contending that the Division Bench of this Court is seized of the matter in Public Interest Litigation (PIL) No. 35/2024. He has invited my attention to couple of orders passed by the Division Bench to submit that the Municipal Council is facing contempt for non-compliance of order passed by this Court by not removing/vacating the occupiers of the blocks on the property under question. One such order is dated 16-12-2024. In paragraph no. 15, the Court has observed as under :

“15. This Court issued directions on 26/03/2014 for removal of unauthorised occupants from the shopping complex within the jurisdiction of the Municipal Council, Wani. Since same was not taken to logical end, the Court caused notice. Therefore, the petition pertains to the non-compliance of the order dated 26/03/2014 delivered in Writ Petition No.1614/2014 by the

respondents-Collector, Yavatmal and Chief Officer, Municipal Council, Wani.”

As could be seen, the Division Bench was made to believe that vide order dated 26-3-2014 passed in Writ Petition No. 1614/2014, the Court has issued directions to remove the unauthorized occupants from the shopping complex within the jurisdiction of Municipal Council, Wani. However, there are no such directions at all and therefore, it will be appropriate to reproduce entire order dated 26-3-2014 passed by this Court in Writ Petition No. 1614/2014. The order reads thus :

“Petitioner an Ex-President and Ex-Vice President of Municipal Council, Wani is before this court, seeking writ for removal of unauthorized occupants from municipal shop blocks and to remove encroachments in Gandhi Chowk Bajar. Also, a direction is sought to allot vacant shops on lease after public auction. Petitioner is presently a nominated member of Municipal Council.

We find that petitioner has not made any representation to respondent nos. 3 & 4 pointing out the alleged illegalities. We, therefore, direct petitioner to prefer suitable representation in this respect within a period of two weeks from today. If such representation is moved, respondent no. 3 and 4 shall consider the same in accordance with law, within a further period of six weeks.

With liberty to the petitioner to move this court again if the grievance is not redressed thereafter, we dispose of this petition.”

Thus, the Ex-President (respondent no. 5 herein) was seeking writ for removal of the unauthorized occupants from the municipal shop blocks and also to remove encroachments in Gandhi Chowk Bajar, which is the subject matter of present petition. The Division Bench found that respondent no. 5 had not made any representation to the Municipal Council to point out the alleged illegalities and,

therefore, was directed to prefer suitable representation. Thus, the Court has not directed the Municipal Council to remove the alleged unauthorized occupants.

In this regard, a specific query was made by the Court and accordingly, Mr. M. I. Dhattrak, learned counsel was called upon to show a single order passed by this Court in any petition whereby the Municipal Council has been directed to remove the alleged unauthorized occupants. He failed to show any.

Mr. Dhattrak has then invited my attention to order dated 7-3-2025 passed by the Division Bench in PIL No. 35/2024 which reads as under.

- “1. A copy of the order passed by the State Government dated 5th March, 2025 is taken on record.*
- 2. The counsel appearing for the respondent no. 4- Municipal Council seeks time to report the consequential action taken.*
- 3. Stand over to 21st March, 2025.”*

As could be seen, a copy of order dated 5-3-2025 (which is impugned in the present petition) was submitted before the Court. Mr. Dhattrak submits that the Division Bench is seized of the matter. To my mind, merely, on tendering copy of order which is impugned in the present petition, it will not lie in the mouth of respondent no. 4 to contend that the Division Bench is seized of the matter. The substantive petition is now filed before this Court challenging the said order.

Put altogether, I did not come across nor could the respondents show a single order passed by this Court directing Municipal Council, Wani to remove the alleged encroachers/ unauthorized occupants.

That being so and since the Collector had passed order without giving opportunity of hearing to the petitioners, who also claim themselves to be lessee of the shop blocks, which aspect, according to the petitioners, has been not properly dealt with by the revisional authority, let there be stay to the impugned order.

The effect and implementation of order dated 7-3-2019 and 5-3-2025 passed by respondent no. 2 is accordingly stayed till next date. The parties are put to notice that the petition will be taken up for final hearing at the admission stage on next date.

Respondents shall file reply by 24-3-2025. Rejoinder, if any, shall be filed by 28-3-2025.

List on 2-4-2025.

(Anil L. Pansare, J.)