

(2025) 04 JH CK 1309

In the Jharkhand High Court

Case No : Writ Petition (C) No. 4243 Of 2023 With W.P.(C) No. 2602 Of 2023

Mallika Asher

APPELLANT

Vs

Jamshedpur Notified Area Committee

RESPONDENT

Date of Decision : 08-04-2025

Acts Referred:

Constitution of India, 1950 — Article 243Q
Jharkhand Municipal Act, 2011 — Section 387

Citation : (2025) 04 JH CK 1309

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : Sumeet Kumar Gadodia, Shruti Shekhar, Saanya, Indrajit Sinha, Arpan Mishra, Prerna Jhunjhunwala, Sahbaj Akhtar, Krishna Kumar, Vijay Kumar Roy, Sumeet Gadodia, Shruti Shakhra, Saanya Kumari

Final Decision : Disposed Of

Judgement

Deepak Roshan, J

1. Heard learned counsel for the parties.
2. Since the issues involved in both these writ petitions are identical and accordingly, both were heard together and are disposed of by this common order.
3. Petitioners in W.P.(C) No. 4243 of 2023 are land owners and Petitioners in W.P.(C) No. 2602 of 2023 are tenants of a double storied building, situated at Holding Nos. 4 & 5 at Sakchi, Boulevard Road, Bistupur, Jamshedpur, popularly known as "Laksmi Mansions"

The brief facts of the case as per the pleadings are that the building in question i.e. "Laksmi Mansions" was constructed in the year 1939 over a land leased by Tata Steel Ltd. in favour of late Laxmidas Asher who died leaving behind his wife, one son and one daughter and by virtue of mutual partition, the building was allotted in the share of son of late Lakshmidas Asher, namely, Hemendra Lakshmidas Asher. Hemendra Lakshmidas died on 24.01.2020 leaving behind his

wife and two daughters, out of which wife and one daughter have filed W.P.(C) No. 4243 of 2023.

4. Petitioners in W.P.(C) No. 2602 of 2023 claimed themselves to be inducted as tenants in aforesaid building 'Lakshmi Mansions' for about last 70 years and are running their shops in the subject property.

5. Both writ petitions have been filed challenging action of Respondent-Jamshedpur Notified Area Committee (for short 'JNAC') as contained in Letter No. 1824 dated 06.07.2021, wherein Special Officer, JNAC directed the landowners to get the building 'Lakshmi Mansions' vacated and thereafter to demolish the same on the ground that said building is in a dilapidated condition.

6. Challenge is primarily on the ground that order passed is in contravention of provisions of Section 387 of Jharkhand Municipal Act, 2011. Tenants in their writ petition have also questioned the jurisdiction of JNAC to issue the aforesaid order on the ground that in view of Notification issued by Urban Development Department of State of Jharkhand, as contained in Notification No. 3111 dated 08.09.1998, JNAC was dissolved and Deputy Commissioner, East Singhbhum, Jamshedpur was directed to depute its subordinate officer for completion of daily operation of the committee. On the said ground, issue of jurisdiction is also raised challenging competence of JNAC to act as a Municipal Body.

7. Mr. Sumeet Gadodia, learned counsel appearing for landlords submitted that order passed by Special Officer, JNAC, contained in Letter No. 1824 dated 06.07.2021 (Annexure-3), is contrary to provisions of Section 387 of Jharkhand Municipal Act, 2011, as neither notice was served upon the owners of the building or upon any person having interest on the building before passing of the impugned order; nor satisfaction was arrived at by Respondent-JNAC regarding the condition as to whether building can be repaired and made fit for human habitation. It was submitted that although Section 387 confers power upon the Municipal Commissioner or Executive Officer to order for demolition of building which is unfit for human habitation, but such order can be passed only after recording satisfaction that building is unfit for human habitation and thereafter decision can be taken for demolition of the building. However, in the present case, Respondent-JNAC merely on complaint made by certain individuals, without complying with mandatory provisions of Section 387 of Jharkhand Municipal Act, 2011, passed the impugned order for vacation and demolition of building, which is not sustainable in the eye of law.

8. Mr. Indrajit Sinha, learned counsel representing the tenants, while adopting the aforesaid submissions, made additional submissions regarding the very jurisdiction of Respondent-JNAC to pass the impugned order of demolition of building. Reliance was placed to Part IX-A of the Constitution of India and it was submitted that after insertion of Part IX-A in the Constitution of India as per Article 243Q, JNAC cannot exist in the eye of law as it is neither Nagar Panchayat/ Municipal Council/Municipal Corporation or an Industrial Township declared by

the State Government and, hence, it cannot exercise the power of a Municipal Body, and, provisions of Jharkhand Municipal Act, 2011 would not apply.

9. Mr. Sinha relied upon the Notification issued by the State of Jharkhand, contained in Notification No. 3111 dated 08.09.1998 to contend, inter alia, that JNAC was dissolved by erstwhile State of Bihar and Deputy Commissioner, East Singhbhum, Jamshedpur was authorized to appoint any of its subordinate officer only for the purposes of completion of day-to-day operation of Notified Area Committee and, hence, JNAC cannot be treated as Municipal Body under Jharkhand Municipal Act, 2011.

10. Mr. Vijay Kumar Roy and Mr. Krishna Kumar, counsels appearing for Respondent-JNAC defended the impugned order and submitted that the building in question is, admittedly, about 90 years old and is in a dilapidated condition and, pursuant to complaint made before JNAC, inspection of the building was carried out by a team of officials of JNAC, which clearly reported that building is in a dilapidated condition and can fall down at any point of time endangering life of people at large. In the said background, Respondent-JNAC passed the impugned order directing landowners to get the building vacated and, consequently, demolish the same and said power has been exercised in terms of Section 387 of Jharkhand Municipal Act, 2011.

11. Regarding jurisdiction of Respondent-JNAC to act as a Municipal Body, reliance was placed upon Supplementary Affidavit dated 25.03.2025 and it was submitted that in terms of provisions of Bihar and Orissa Municipal Act, 1922 and consequent Notification dated 14th July, 1926, Notified Area Committee at Jamshedpur is continuously discharging municipal functions.

It has been further submitted that reliance placed upon Notification No. 3111 dated 08.09.1998 by writ petitioners-tenants to contend, inter alia, that JNAC has been dissolved, is misplaced, as, under the said Notification, only existing committee of JNAC was dissolved and, thereafter, vide another Notification bearing Memo No. 3550 dated 27.09.2000, the post of Special Officer was created to discharge the functions of JNAC.

12. Further reliance was placed upon the letter issued by the State of Jharkhand through Urban Development Department being Letter No. 2425 dated 22.12.2004, and it was stated that under Jharkhand Municipal Act, 2000, Special Officer, JNAC was even provided financial power for executing the work of Respondent-JNAC.

13. Learned counsels for Respondent-JNAC further relied upon an order passed by Hon'ble Apex Court in Writ Petition (Civil) No.549 of 2018 titled 'Jawaharlal Sharma vs. The State of Jharkhand and Ors.', being order date 13.07.2018 and submitted that the issue pertaining to status of JNAC is pending before the Hon'ble Supreme Court and Hon'ble Apex Court, in the said matter, has held that any action taken by State Government shall be subject to the final adjudication of the writ petition.

14. Reliance was also placed upon an order dated 13th September, 2024 passed by Division Bench of this Court in W.P.(PIL) No. 2636 of 2024 titled as 'Saurav Vishnu Vs. State of Jharkhand and others', wherein the Division Bench, on identical issue of status of JNAC, has deferred the hearing of said Writ Petition (PIL) to be listed after disposal of writ petition pending before Hon'ble Apex Court.

It was submitted that State of Jharkhand, vide Notification No. 5842 dated 28.12.2023, has already constituted an Industrial Township at Jamshedpur but said Industrial Township is yet to be notified. It was further submitted that Respondent-JNAC, since the year 1926, is continuously discharging municipal functions for Jamshedpur Town and is vested with all jurisdiction of Municipal Body as stipulated under Jharkhand Municipal Act, 2011. It was also submitted that JNAC is not only providing municipal services, but is also sanctioning Building Permits etc. at Jamshedpur Town and, thus, contention of writ petitioners that Respondent-JNAC has no existence in the eye of law, is wholly misconceived.

15. Having heard learned counsels for the parties and after going through the documents annexed with the respective affidavits and the averments made therein, this Court is of the opinion that the order contained in Letter No. 1824 dated 06.07.2021 passed by Special Officer, JNAC is liable to be quashed and set aside as the same has been passed without complying with mandatory provisions of Section 387 of Jharkhand Municipal Act, 2011. For brevity, Section 387 of Jharkhand Municipal Act, 2011, is quoted herein-under:-

387. "Power to order demolition of building unfit for human habitation-

(1) Where, upon information in his possession, the Municipal Commissioner or the Executive Officer is satisfied that any building is unfit for human habitation and is not capable at a reasonable expense of being rendered fit, he shall serve upon the owner of the building and upon any other person having an interest in the building, whether as a lessee or as a mortgagee or otherwise, a notice to show cause within such time as may be specified in the notice as to why an order of demolition of the building should not be made.

(2) If the owner of the building, or other person, upon whom a notice has been served under sub-section (1), appears in pursuance thereof before the Municipal Commissioner or the Executive Officer and gives an undertaking that he shall, within a period specified by the Municipal Commissioner or the Executive Officer, execute such works of improvement in relation to the building as will, in the opinion of the Municipal Commissioner or the Executive Officer, render the building fit for human habitation or that the building shall not be used for human habitation until the Municipal Commissioner or the Executive Officer on being satisfied that it has been rendered fit for such habitation, the Municipal Commissioner or the Executive Officer shall not make an order of demolition of the building.

(3) If no such undertaking as is referred to in sub-section (2) is given, or if, in a case where any such undertaking has been given, the works of improvement to which the undertaking relates are not carried out within the specified period or the building is used in contravention of the undertaking, the Municipal Commissioner or the Executive Officer shall forthwith make an order of demolition of the building requiring that the building shall be vacated within a period to be specified in the order, not being less than thirty days from the date of the order, and demolished within six weeks on the expiration of that period.

(4) Where an order of demolition of a building under sub section (3) has been made, the owner of the building or any other person having an interest therein shall demolish such building within the period specified in the order, and if such building is not demolished within that period, the Municipal Commissioner or Executive Officer shall demolish the building and shall sell the materials thereof.

(5) Any expenses incurred by the Municipal Commissioner or the Executive Officer for carrying out the purposes of sub-section (4) which cannot be met out of the proceeds of the sale of materials of the building, shall be recovered from the owner of the building or any other person having an interest therein as an arrear of tax under this Act.

(6) Any person who fails to comply with the notice issued by the Municipal Commissioner or the Executive Officer under sub-section (1) shall be liable to a fine not exceeding two thousand rupees and to a further fine of two hundred rupees for every day during which the default is continued after the expiration of eight days from the date of service on him of such notice.

(7) In determining, for the purposes of this section whether a building is unfit for human habitation, regard shall be had to its condition in respect of the factors such as,--

(a) repair,

(b) stability,

(c) freedom from damp,

(d) natural light and air,

(e) water-supply,

(f) drainage and sanitary conveniences, and

(g) facilities for storage, preparation and cooking of food and for the disposal of rubbish, filth and other polluted matter;

And the building shall be deemed to be unfit for human habitation only if it is so defective in one or more of the factor as aforesaid that it is not reasonably suitable for occupation in that condition.

(8) For the purposes of this section, "works of improvement", in relation to a

building, shall include any one or more of the following works, namely:-

- (a) necessary repairs,
- (b) structural alterations,
- (c) provision of light points and water taps,
- (d) construction of drains, open or covered'
- (e) provision of latrines and urinals,
- (f) provision of additional or improved fixtures and fittings,
- (g) opening up or paving of courtyard,
- (h) removal of rubbish, filth and other polluted and obnoxious matters, and
- (i) any other work including the demolition of any building or any part thereof which, in the opinion of the Municipal Commissioner or the Executive Officer, is necessary for executing any of the works as aforesaid.

(9) The provisions of this section shall not apply in relation to any building in any area which has been declared to be a slum area under any State law relating to improvement or clearance of slums."

16. A bare perusal of Section 387(1) of the Act would reveal that if any building is unfit for human habitation and is not capable at a reasonable expense of being rendered fit for habitation, the Municipal Commissioner, or Executive Officer is required to serve upon owner of the building or upon any other person having interest on the building, a notice to show cause as to why the order of demolition of building should not be made.

17. In the present case, admittedly, no notice whatsoever was issued/served either upon land owners and/or tenants being persons having interest in the building. Although Respondent-JNAC contended that it made due inquiry regarding whether the building is fit for human habitation or not, but, from the impugned order, it does not reflect the same. It is incumbent upon a Municipal Body, before making an order for demolition of a building, to ascertain whether the building is unfit for human habitation or whether if work of improvement in relation to the building can be undertaken to make the building fit for human habitation.

As stated hereinabove, in the instant case, neither notice was issued to landowners and/or tenants; nor any determination regarding work of improvement in relation to the building for making it fit for human habitation was undertaken by Respondent-JNAC.

18. Under the said circumstances, impugned order passed by Respondent-JNAC directing for demolition of the building cannot be sustained in the eye of law and, accordingly, the same, is hereby, quashed and set aside.

19. The next question for determination is whether Respondent-JNAC at all has jurisdiction to act as a Municipal Body in view of 74th Constitutional Amendment Act, 1992 i.e. insertion of Part IX-A in the Constitution of India.

20. Mr. Sinha, while placing reliance upon Article 243-Q of the Constitution of India, has emphatically submitted that there can be a municipal body which may be a Nagar Panchayat (for transitional area), a Municipal Council (Smaller Urban area) and Municipal Corporation (Larger Urban area) and the State Government may also specify, by public notification, such an urban area or part thereof to be an Industrial Township.

21. It was submitted that JNAC was merely a Notified Area Committee comprising of certain officials looking after day-to-day functions of Municipality prior to introduction of 74th Constitutional Amendment Act, 1992 and after said amendment, JNAC ceased to exist in the eye of law.

22. Per contra, counsel for Respondent-JNAC as well as State of Jharkhand has opposed the aforementioned submission and has vehemently submitted that vide Notification No. 3111 dated 08.09.1998, only members of the Committee of JNAC was dissolved and Special Officer was appointed for looking into affairs of Respondent-JNAC. Subsequently, State Government even appointed Special Officer and conferred upon it all financial powers vested upon a Municipality for carrying out municipal functions.

23. I have carefully examined rival submissions of the parties and I am of the opinion that the issue regarding existence of JNAC is already sub-judice before the Hon'ble Apex Court in Writ Petition (Civil) No. 549 of 2018 (Jawaharlal Sharma vs. The State of Jharkhand and Ors.) (supra) and Hon'ble Supreme Court, vide its order dated 13.07.2018, has directed as under:-

"Needless to say, our issuance of notice will not create impediment on the part of the State of Jharkhand to proceed with the matter in accordance with law to confer any status on Notified Area Committee, Jamshedpur for 'Industrial Township', as has been stated in Civil Appeal No. 467 of 2008. However, we may add, any action taken by the State Government shall be subject to the final adjudication in this writ Petition."

(Emphasis supplied)

24. Admittedly, State of Jharkhand has already issued Notification No. 5842 dated 28.12.2023 declaring Jamshedpur to be an Industrial Township. However, Notification regarding functioning of Industrial Township at Jamshedpur has yet not been issued by State of Jharkhand. It is in the backdrop of aforesaid facts that the Respondent-JNAC is continuing to discharge municipal functions including, sanction of map, sewerage, drainage, cleaning of roads, etc.

25. This Court is of the firm opinion that if functioning of JNAC is stopped, chaos would be caused in the entire Township and it is for the said reason that State Government is continuing to appoint Special Officer of Respondent-JNAC for

carrying out municipal functions.

In any event, the issue regarding existence of JNAC and constitution of Industrial Township is pending before the Hon'ble Apex Court, wherein the Court has specifically held that pendency of the writ petition before Hon'ble Apex Court will not create an impediment on the part of State of Jharkhand to proceed with the matter in accordance with law to confer any status on Notified Area Committee, Jamshedpur for 'Industrial Township'.

This court is of the opinion that any observation made by this Court, at this stage, regarding status of Respondent-JNAC would be directly in conflict with the order dated 13.07.2018 passed by Hon'ble Apex Court. The view of this Court is further fortified by order dated 13th September, 2024 passed by the Division Bench of this Court in the case of 'Saurav Vishnu Vs. State of Jharkhand and ors. (supra).

26. Having regard to the aforesaid discussions, impugned order as contained in Letter No. 1824 dated 6.7.2021 passed by Special Officer, JNAC, is hereby, quashed and set aside. Since both, landlords and tenants are parties before this court and this court being of the opinion that issue regarding condition of the building, whether in a dilapidated condition requiring demolition and/or its repair, is an emergent issue which is to be decided by Respondent-JNAC, this Court deems it fit to fix the date of hearing in the matter before Special Officer, JNAC on 23rd April, 2025 at 11.00 A.M. Writ petitioners are directed to appear before Respondent-JNAC on the said date of hearing and submit their respective replies regarding their stand pertaining to demolition of the building. Respondent-JNAC shall also ensure that a notice be posted at a conspicuous place of 'Lakshmi Mansions' informing all concerned about the next date of hearing on 23rd April, 2025. Respondent-JNAC, thereafter, upon granting due opportunity of hearing to all concerned and after carrying out inspection and/or independent survey etc., shall pass final order in terms of Section 387 of Jharkhand Municipal Act, 2011. The entire exercise should be completed within a period of four months from the date of this order.

27. As a result, both these Writ Petitions stand disposed of in the manner indicated hereinabove. Pending I.As., if any, shall also stand closed.