

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

WRIT PETITION No.958 OF 2015

(M/s. Rai Udyog Ltd., Nagpur .vs. Haridas s/o. Pandhari Bhade and Ors.)

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

Court's or Judge's orders

CORAM : B.P.DHARMADHIKARI &
S.B.SHUKRE, JJ.

DATE : 17.3.2015.

Heard Mr.S.M.Patrikar, learned Counsel for the petitioner and Mr.N.R.Rode, learned A.G.P. for respondent no.3.

According to Mr.S.M.Patrikar, learned Counsel, the petitioner is owner of land bearing S.No.202-3, admeasuring 2 acres bearing City Survey No.461, mouza Zingabai Takli. Respondent no.1 has got no concern with it and the Nagpur Improvement Trust has already found him to be an encroacher. Respondent no.1 has purchased adjacent lands bearing S.Nos. 202/4/A and 204/4 from the members of Chandak family and thereafter, he has encroached on the lands of the petitioners also.

In order to explain the situation, the learned Counsel also points out other sale instances entered into by respondent nos. 5 and 8.

After hearing Mr.S.M.Patrikar, learned Counsel, we find that identity of the property purchased by the petitioner or by respondent no.1 is the subject matter of dispute. The petitioner has already filed a Civil Suit No.616

of 2014 which is pending and in it, interim injunction is also secured by the petitioner/plaintiff. It appears that some measurements or demarcations were also to be undertaken as per orders of respondent no.3, but the same have been cancelled on 25.8.2014. Prayer in Writ Petition is to remove encroachment of respondent no.1 on petitioner's land

It is apparent that the disputed questions of facts arise. Unless and until those questions are settled, cognizance of prayer of the petitioner cannot be taken directly in writ jurisdiction.

As the Civil Suit is already going on between the petitioner and respondent no.1, we are not inclined to interfere in the matter.

At this stage, learned Counsel for the petitioner submits that the petitioner sold about 200 flats at that site and respondent no.4 has issued communication on 9.1.2015. By the said communication, respondent no.4/N.I.T. has pointed out that, along with the application seeking building permission, the petitioner had placed some documents of title on record. It then makes a reference to the orders passed by respondent no.3 in review wherein the measurement and demarcation of Khasra no.202 (City Survey No.461) is reported to be cancelled. Plot No.202/1/B, in relation to which the petitioner has sought sanction, is seen to be included in it. In view of these facts, the N.I.T. has restrained the petitioner from proceeding further with construction. Petitioner claims that its construction is over in 2006 itself.

All these developments show serious dispute about title as also possession and unless and until that

dispute is satisfactorily resolved, action of N.I.T. in restraining the petitioner from proceeding further with the construction cannot be faulted with.

In this situation, without observing anything on merits and with leave to the petitioner to raise all these contentions in pending Civil Suit, we dispose of present Writ Petition. No costs.

JUDGE

JUDGE