

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

WRIT PETITION NO.776 OF 2014

(Shri Sanjay s/o Namdeorao Puriji ..vs.. State of Maharashtra, through Deputy Director of Land
Records, Nagpur Division Nagpur and others)

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

Court's or Judge's orders

CORAM : Z.A. HAQ, J.
DATED : 26-10-2015

Heard Shri S.A. Chaudhari, learned Advocate holding for Shri Anand Parchure, Advocate for the petitioner, Shri S.M. Bhagde, learned Assistant Government Pleader for the respondent Nos.1, 2 and 4 and Shri R.S. Kalkar, learned Advocate holding for Shri D.V. Siras, Advocate the respondent No.3.

None appears for the respondent No.5 though the notice of final disposal is served.

2. The petitioner has challenged the order passed by the Deputy Director of Land Records dismissing the appeal filed by the petitioner in respect of the dispute relating to measurement of the land in question. The petitioner has further prayed that the Deputy Director of Land Records be directed to undertake the measurement of the lands Survey No.150/1 and Survey No.150/2 of Mouza Wadi, Tahsil and District Nagpur jointly, in accordance with law.

3. The respondent No.3 filed Regular Civil Suit No.1590/2003 against the petitioner contending that the petitioner has encroached on some portion of the plot owned by the respondent No.3. The respondent No.3 has prayed for decree for declaration that the petitioner has no right to make any construction on the suit property. The respondent No.3 has prayed for decree for permanent injunction restraining the petitioner from undertaking the construction on the suit property and from causing any interference in the possession of the respondent No.3. The respondent No.3 has prayed for decree for mandatory injunction seeking directions against the petitioner to remove the temporary structure erected by the petitioner. In this suit, the petitioner had filed an application praying that the Commissioner be appointed to measure the disputed land and submit the report to the Court. This application came to be rejected. The petitioner had filed Writ Petition No.3723/2009 before this Court challenging the order passed by the trial Court, which came to be disposed on 01-09-2009, granting liberty to the petitioner to make application to appropriate authority for undertaking the measurement of the disputed land.

4. Accordingly, the petitioner submitted an application to the Taluka Inspector of Land Records. The petitioner requested the Taluka Inspector of Land Records to undertake measurement of land Survey

No.150 which according to the petitioner is sub-divided into Survey No.150/1 and Survey No.150/2. It is the case of the petitioner that he has not encroached on the land as contended by the respondent No.3 and if there is any encroachment, it is by the members of Balabhau Gruhanirman Sanstha and therefore, it is necessary to measure the entire land Survey No.150. The Superintendent of Land Records, by the order dated 27-04-2012, disposed the application submitted by the petitioner without undertaking the measurement as requested by the petitioner. The petitioner challenged the decision of the Superintendent of Land Records before the Deputy Director of Land Records in appeal which is dismissed by the impugned order. The petitioner being aggrieved in the matter, has approached this Court.

5. This Court, by the order dated 12-02-2014 while issuing notice, directed the respondent Nos.1,2 and 4 to file an affidavit clarifying as to why the land Survey No.150/2 cannot be measured. In response to the notice, the respondent Nos.1 and 4 filed the affidavit, however, the submissions of the respondent Nos.1 and 4 were not found to be satisfactory and therefore, the respondent No.4 has filed additional affidavit sworn on 16-07-2015. The relevant submissions are found in paragraph Nos.4 and 5 of this affidavit as follows :

“4. It is submitted that, the office of the answering respondent has issued letter dated 21-8-2013 to the petitioner for depositing the measurement charges as per the measurement application alongwith documents. It is further submitted that, till date the petitioner has not deposited the measurement charges with office of this answering respondent. The said letter dated 21-8-2013 is already annexed as Annexure R-1 at page No.56.

5. It is submitted that as per office record of this answering respondent there is only one survey number i.e. survey No.150 of Mouza Wadi, Tq. and Distt. Nagpur. It is further submitted that, the said survey No.150 of Mouza Wadi is not bifurcated in Survey No.150/1 and Survey No.150/2 as per office record of this answering respondent.”

6. After the above affidavit came to be filed, it was urged on behalf of the petitioner that the submissions made by the respondent No.4 are not correct. The petitioner contended that the communication dated 21-08-2013 alleged to have been sent to the petitioner was not served on the petitioner. The respondent No.4 was, therefore, directed by the order dated 13-10-2015 to produce the documentary evidence to substantiate that the communication dated 21-08-2013 was served on the petitioner. The respondent No.4 was directed to keep the original record available at the time of hearing. Shri S.M. Bhagde, learned Assistant Government Pleader has submitted that there is no material available with the respondent No.4 to show that the communication dated

21-08-2013 is served on the petitioner. The learned Assistant Government Pleader has not been able to justify as to on what basis statement is made on affidavit that inspite of communication dated 21-08-2013, the petitioner has not deposited the measurement charges.

In paragraph No.5 of the affidavit sworn on 16-07-2015, the respondent No.4 has stated that Survey No.150 of Mouza Wadi is not bifurcated and Survey No.150/1 and Survey No.150/2 do not exist on the record maintained by the respondent No.4.

7. After hearing the learned Advocates for the respective parties and examining the documents filed on the record, I find that the respondent Nos.2 and 4 and the Deputy Director of Land Records are avoiding to discharge their duty. There is no apparent reason as to why action is not being taken on the application submitted by the petitioner requesting for measurement of land Survey No.150 of Mouza Wadi, Tahsil and District Nagpur. Though the respondent No.4 tried to create a ground that the petitioner has not deposited the necessary charges for undertaking the measurement, Shri S.A. Chaudhari, learned Advocate for the petitioner has pointed out from paragraph No.4 of the counter-affidavit sworn by the petitioner on 09-06-2014 that the petitioner has deposited an amount of Rs.23,250/- on 18-09-2009. The petitioner has produced copy of challan alongwith the counter-affidavit. The respondents have not

controverted the submissions made on behalf of the petitioner.

It is apparent that either there is callousness on the part of the respondent Nos.2, 4 and the Deputy Director of Land Records in dealing with the matter or there is deliberate attempt on their part for inaction on the application submitted by the petitioner.

8. In view of the facts on the record, the following order is necessary to sub-serve the ends of justice :

- (i) The Deputy Director of Land Records shall take appropriate decision for measurement of the land Survey No.150 of Mouza Wadi, Tahsil and District Nagpur as requested by the petitioner, whether the land Survey No.150 of Mouza Wadi, Tahsil and District Nagpur is bifurcated into Survey No.150/1 and Survey No.150/2, or not. The steps for undertaking the measurement shall be undertaken within two months. Needless to state that the measurement shall be undertaken after giving due notices to the petitioner, the respondent Nos.3 and 5 and any other concerned person/persons, felt necessary.
- (ii) The Deputy Director of Land Records shall examine as to whether the petitioner has deposited the amount of Rs.23,250/- and

whether the petitioner is liable to deposit further amount in the matter. The learned Advocate for the petitioner has submitted that the petitioner has deposited the measurement charges as prevailing in 2009 when the petitioner submitted the application. It is clarified that the Deputy Director of Land Records shall examine the liability of the petitioner to deposit the measurement charges as per the rates prevailing at the time the petitioner submitted the application for measurement.

9. In the affidavits filed on behalf of the respondent No.4 on 08-05-2014 and 16-07-2015, misleading statement came to be made that communication dated 21-08-2013 was sent to the petitioner for depositing the measurement charges. Shri Shashikant Himmatrao Deshmukh, Deputy Superintendent of Land Records, Nagpur who has sworn the affidavit dated 07-05-2014, filed before this Court on 08-05-2014 and Shri Tamanna Lagama Gidamani, Deputy Superintendent of Land Records, Nagpur (R) who has sworn the affidavit dated 16-07-2015 shall pay Rs.5,000/- each to the petitioner.

10. The petition is allowed in the above terms.

Civil Application No.805 of 2014.

In view of the disposal of the petition, the application praying for dispensing with the true translation of the document is rendered infructuous. It is disposed accordingly.

JUDGE

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