

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

WRIT PETITION NO. 2898 OF 2013

(Laxmi Karmachari Co-operative Housing Society thr. its President Shri Vishnu s/o Shrihari Ashtikar
& Ors. vs. State of Maharashtra thr. Secretary, Department of Urban Development & Ors.)

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

Court's or Judge's orders

**CORAM : B.P. DHARMADHIKARI &
A.P. BHANGALE, JJ.
MARCH 13, 2015.**

Heard Shri Kedar, learned counsel for the petitioners, Shri Kankale, learned AGP for respondent No. 1, Shri Samarth, learned counsel for respondent No. 2 – Planning Commission and Shri Deshpande, learned counsel for respondent Nos. 4 to 9.

The order of Nagpur Improvement Trust dated 04.09.2012, refusing regularization is questioned before this Court by the petitioner – society. The regularization was to be considered in terms of Maharashtra Gunthewari Developments (Regularisation, Upgradation and Control) Act, 2001, (hereinafter referred to as the Act).

After hearing the respective counsel, we find that the matter was placed before the Competent Authority viz., the Chairman, Nagpur Improvement Trust, because of earlier orders of this Court passed in Writ Petition No. 2377 of 2012. After hearing

respective parties, the Chairman of NIT has passed an order observing that the proposal for regularization is to be processed on merits after the receipt of approval from the State Government and after settlement of ownership dispute by the Court of laws. Till then, action of regularization has been kept in abeyance.

Shri Kedar, learned counsel submits that after purchase of land by the petitioner – society from Respondent Nos. 4 to 9, total 85 plots were laid and 35 plots out of them were sold to original owners and their relatives. He further submits that out of 85 plots, 75 plots have been regularized under the above mentioned Act and question of regularization of 10 plots only was before the Chairman of Nagpur Improvement Trust. Out of 10 plots, the petitioner – society is interested in five plots.

Shri Deshpande, learned counsel submits that his clients are interested in regularization of remaining five plots. However, he adds that the alleged sale deed obtained by the petitioner from Respondent Nos. 4 to 9 is seriously in dispute before the Competent Court and hence the observations in the impugned order do not call for any interference. He, therefore, strongly opposes any intervention by this Court.

Shri Samarth, learned counsel for the Planning Authority states that the title dispute is pending before the Cooperative Court until and

unless it is adjudicated upon, regularization cannot be done.

According to Shri Kedar, learned counsel, no title dispute is pending before any Court.

A perusal of provisions of Section 4 of above mentioned Act show that a plot holder can apply for regularization in Gunthewari Act. The provisions of Section 3 which contemplate such regularization speak of Gunthewari Developments existing as on 01.01.2001 and its sub-section (2)(d) specifically stipulates that regularization of Gunthewari Development does not confer any title or claim in respect of the land or building not already enjoyed by its holder prior to such regularization. Thus, the regularization does not add to any legal right and if any title dispute is pending, it can be decided independent of such regularization. Section 4(2) requires certain documents to be submitted along with the application for regularization. The first document is, documentary proof of ownership or lawful possession of the plot. Thus, a person in lawful possession can also apply for regularization.

In present facts, when about 75 plots in the lay out consisting of total 85 plots are alleged to have been regularized and the petitioner claims that out of five plots in which the petitioner is interested, three were earlier regularized, the basic issue to be looked into was whether the members of the petitioner – association were/ are in lawful possession of those five plots. The

other question will be whether Respondent Nos. 4 to 8 who are the persons holding on their behalf are in possession of other five plots. This aspect of possession does not find any consideration in the impugned order.

As such, we find the impugned order unsustainable. Only to enable Respondent No. 2 to look into this aspect of lawful possession, we set aside the said order and place the matter back before Respondent No. 2. Respondent No. 2 shall hear the parties and take suitable decision within the next three months after the parties appear before it. The parties are directed to appear before Respondent No. 2 on 20.04.2015 and to abide by its further instructions in the matter.

Writ Petition is thus partly allowed and disposed of. No order as to costs.

JUDGE

JUDGE

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