

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

WRIT PETITION NO. 2398 /2013

(Sudhakar mahadu Rane and others vs. Nagpur Improvement Trust Nagpur and others)

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

Court's or Judge's order

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Mr. S.S.Voditel, Adv.for petitioners
Mr. R.O.Chhabra, Adv.for Res.No.1
Mr.Alok Chaudhari,Adv.for Res.No.4

CORAM : B.R.GAVAI &
INDIRA K. JAIN, JJ.
DATED : 15th June, 2015.

Heard.

The petitioners have approached this Court seeking a direction that the Nagpur Improvement Trust (N.I.T.) should not refuse 'no objection certificate' to the petitioners for sale, purchase and mortgage of their plots on the objection of the respondent no.4 on the basis of judgment and decree dated 15.1.2009 in R.C.S. No.106/1995 passed by learned 8th Joint Civil Judge, Jr. Dn. Nagpur.

It is the contention of the learned counsel for the petitioners that there is no provision in the Gunthewari Act, 2001 to insist on 'no objection certificate' of the owner while grant of the necessary

permission to sell purchase and mortgage the plots.

Undisputedly, a Court of competent civil jurisdiction has passed a decree declaring the occupation or possession of the petitioners to be illegal and permanent injunction is also issued against the present petitioners restraining them from encroaching illegally on the suit land.

The question as to whether the said judgment passed by the learned Civil Court is legal or not, cannot be gone into by this Court while exercising writ jurisdiction. A competent Appellate Court can go into that aspect of the matter and if it finds that the judgment and decree passed by the Civil Court is not in accordance with law, would pass an appropriate order by following the laid down procedure.

We are informed at the Bar that the First Appeal is also carried by the present petitioners. If the appellants/petitioners are of the view that the judgment and order passed by the learned Civil Court is not in accordance with law, they are not prevented from making an application under O.41 R. 5 of the Civil Procedure Code for stay to the judgment and

decree of the learned trial Court.

If the relief as claimed is granted, we will be directing the N.I.T. to ignore the judgment and decree passed by the competent Civil Court.

Such a direction cannot be issued while exercising jurisdiction under Article 226 of the Constitution of India. Writ Petition is, therefore, without substance and, as such, rejected.

JUDGE

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