

IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 2441 /2015

(Shri Ghanshyam s/o Namdeorao Nakade vs. Nagpur Municipal Corporation and another)

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

Court's or Judge's order

Mr.H.R.Gadhia, Advocate for the petitioner
Mr.S.M.Puranik, Advocate for Respondent Nos.1 & 2

**CORAM : SMT. VASANTI A. NAIK &
A.S. CHANDURKAR, JJ.**

DATED : 16th September, 2015.

Heard.

By this petition, the petitioner challenges the order of the respondent no.2-Market Superintendent Nagpur Municipal Corporation, Nagpur, dated 17.6.2014, asking the willingness of the petitioner for grant of shop premises on lease at the market rate as per the provisions of Section 79(d) of the Maharashtra Municipal Corporation Act, 1949.

The petitioner claims to be an Ex-Officer of the Indian Army and in view of his services, the petitioner applied to the Corporation, in the year 1994, for allotment of land/shop for commercial use. According to the petitioner, the respondent-Corporation allotted a plot of the land to the petitioner by an order dated 28.10.1994. It is the case of the petitioner that an area of 330 sq.ft. was allotted to the petitioner @

Re.1/- per square foot, per month. It is not in dispute that a lease-deed was never executed in favour of the petitioner in terms of the communication dated 28.10.1994 and the petitioner was never given the possession of 330 sq.ft. of plot. The respondent-Corporation decided to construct a Shopping Complex in the area that was sought to be allotted to the petitioner on 28.10.1994 and the adjoining area. The shopping complex was constructed and after the construction of the same, the petitioner again applied to the Corporation for allotment of shop in the Shopping Complex for commercial use. After several representations were made by the petitioner, the petitioner was informed by the impugned communication dated 17.6.2014 that the petitioner could be allotted the plot at the market rate, in view of the provisions of Section 79 (d) of the Maharashtra Municipal Corporation Act. The communication dated 17.6.2014 is impugned by the petitioner in the instant petition.

According to the petitioner, since the petitioner was allotted the shop admeasuring 330 sq.ft. @ Re. 1/- per sq.foot, per month, the respondent Corporation was not justified in asking the petitioner to accept the allotment of the shop at the market rate. It is stated that the allotment of the plot to the petitioner, in the year 1994, was in accordance with the provisions of Section 70 of the City of Nagpur Corporation Act, 1948 and hence after the repeal of the said Act, the respondent-Corporation could not have invoked the provisions of Section 79(d) of the Maharashtra

Municipal Corporation Act. It is stated that the respondent-Corporation is not justified in directing the petitioner to accept the shop at the market rate.

On hearing the learned counsel for the parties, it appears that the petitioner would have no right whatsoever to claim a shop in the Shopping Complex constructed by the respondent-Corporation. Only an offer was made to the petitioner by the communication dated 28.10.1994, for lease of 330 sq.ft. of land @ Re. 1/- per sq.ft., per month. There is nothing on record to show that the offer was accepted by the petitioner and a lease-deed or allotment deed was executed in favour of the petitioner in furtherance of the communication dated 28.10.1994. By the said communication, the Corporation had asked the petitioner to convey whether the terms and conditions in the said communication were acceptable to the petitioner and whether the land could be allotted to the petitioner on the said terms. There is nothing on record to show that the offer dated 28.10.1994 fructified and that a lease deed or allotment deed was executed in favour of the petitioner. It is admitted that the petitioner was never granted the area of 330 sq.ft. that was offered to him by the communication dated 28.10.1994. Except the communication dated 28.10.1994, there is nothing on record to show that the petitioner was indeed allotted the land admeasuring 330 sq.ft. or that the said land was leased to him. The Corporation constructed the Shopping Complex on a large piece of land including the land that was sought to be allotted to the petitioner, in the year 1994.

If the Respondent-Corporation had not executed the lease or allotment deed in favour of the petitioner and if the possession of the land was not delivered to the petitioner, the petitioner could have filed appropriate proceedings seeking the possession of the land and execution of the deed of allotment or lease, as the case may be. It, however, appears that nothing happened in the matter from the year 1994 and after the Shopping Complex was constructed, the petitioner again renewed his prayer for allotment of shop in the Shopping Complex. The respondent-Corporation, in the circumstances of the case, rightly asked the petitioner whether the petitioner was agreeable to accept the allotment at the market rate. We find that no right was created in the petitioner to seek the allotment of the shop in the Shopping Complex. However, the Corporation, on the basis of the old document dated 28.10.1994, offered to allot the shop to the petitioner at the market rate. There is nothing wrong in the action of the Corporation in asking the petitioner to secure the shop at the market rate.

Since the impugned communication cannot be faulted with, the Writ Petition is dismissed, with no order as to costs.

At this stage, Shri H.R. Gadhia, the learned counsel for the petitioner states that the petitioner is still interested in seeking the allotment of the shop at the market rate and the respondent-Corporation may not resile from the offer made in the communication. Shri S.M. Puranik, the learned counsel for the

Corporation states that the offer made to the petitioner by the impugned communication would surely be valid for some time and the petitioner is free to accept the allotment of the shop at the market rate within a reasonable time.

Order accordingly. No costs.

JUDGE

JUDGE

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