

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

W.P.No. 2659 of 2015

Anjuman Hami- E- Islam, a registered Public Trust vs. State of Maharashtra and
others.

Notes, Office Memoranda of

Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's
Orders.

Shri K.H.Deshpande, learned Senior
Advocate with Shri A.M.Sudame, Adv. for
the petitioner.

Smt. B.H.Dangre, Govt. Pleade for R-1 to 3
Shri Anand Parchure, Adv. for R-1 to 3.
Shri S.K.Mishra, Adv. for R-5.

CORAM: B.R.GAVAI & INDIRA K. JAIN, JJ
DATE : 19.6.2015

The present petition is filed for the following reliefs.

- i) Direct the Respondents not to construct auditorium on the playground adjacent to the Raj Bhavan, Nagpur in the possession of the Anjuman;
- ii) Direct the Respondents not to disturb the possession of the Ajunman over the playground adjacent to the Raj Bhavan, Nagpur;
- iii) By an ad interim ex parte order or an interim order restrain the Respondents from constructing

on the playground;

iv) In the alternative direct the Respondents not to create any obstructions in peaceful possession of the Anjuman over the playground.

2. The petitioner has raised its claim on the basis of the letter addressed by the Military Secretary to the Governor of Madhya Pradesh to the Deputy Commissioner, Nagpur dated 29th November, 1955. It is contended on behalf of the petitioner that in view of the said letter, the petitioner has been consistently using the land in question for play ground. It is contended that the proposed action on the part of the State Government in converting the user of the said land from the play ground to for auditorium is not permissible in law. It is further contended that the proceedings initiated under the provisions of Section 37 of the Maharashtra Regional & Town planning Act, 1966 are not being proceeded in accordance with law.

3. Perusal of the communication dated 29.11.1955 would reveal that the land in question belongs to Raj Bhavan. It appears that out of the said land, the petitioner has been permitted to use the part of the land as a play ground. It further appears that subsequently even the students of the Government Girls High School, Sadar were also permitted to use the said land as a play

ground.

4. It will be relevant to note that the permission which is granted by His Excellency the Governor of Madhya Pradesh is clearly subject to the express condition that the use by the two institutions mentioned above is wholly at the will and pleasure of his Excellency the Governor and this concession may be terminated by the Governor or his successors at any time without any obligation whatever to the institutions concerned.

5. In that view of the matter, since the permission which was granted by the Governor is purely permissive and also expressly mentioning therein that it is at the will and pleasure of his Excellency the Governor and that the concession could be terminated by his Excellency the Governor or his successor, the petitioner cannot claim vested right in the said land.

6. In any case in the writ jurisdiction, we find that the claim of the petitioner cannot be considered. Insofar as the contention of the petitioner regarding non following of the procedure under Section 37 of The Maharashtra Regional and Town Planning Act, 1966 is concerned, as of now no notification under Section 37 of the said Act has been issued by the State. In that view of the matter, the contention in that regard, in our view, is totally premature in

nature. The Courts, while exercising the powers under Article 226, are not expected to exercise the jurisdiction on the basis of apprehension.

7. We do not propose to observe anything about the availability of any right to the petitioner under common law. If the petitioner is entitled to any of the rights available in ordinary Civil Law, the petitioner is always at liberty to agitate his grievances before the competent Civil Court by establishing his rights on the basis of the cogent evidence.

8. We, therefore, do not find that a case is made out for interference under Article 226 of the Constitution of India. The petition is rejected.

JUDGE

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