

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

WRIT PETITION NO.3638 OF 2015

[Shri Asif s/o Bismillah Sheikh .vs. Nagpur Improvement Trust, Nagpur and one]

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

Court's or Judge's orders

Shri S.M. Puranik, counsel for the petitioner,
Shri M.V. Samarth, counsel for the respondent no.1,
Shri L.G. Sagdeo, counsel for the respondent no.2.

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CORAM : SMT. VASANTI A. NAIK AND
A.I.S. CHEEMA, JJ.

DATED : AUGUST 27, 2015.

By this petition, the petitioner seeks a direction to the Nagpur Improvement Trust to remove the encroachments made by the respondent no.2 on the open space in Nikhare Lay-out, Mankapur, Nagpur by demolishing the illegal construction. A direction restraining the respondent no.2 from undertaking any further construction on the open space is also sought.

It is the case of the petitioner that the respondent no.2 has started making illegal construction on the area earmarked as an open space. It is stated that the existence of the Hanuman Temple on the said plot is not disputed, but the respondent no.2 cannot be permitted to make illegal construction on the plot that is required to be used as an open space.

The respondent no.2 has filed an affidavit-in-reply. It is stated in the affidavit-in-reply that the respondent no.2 is the owner of the property and the property was gifted to the respondent no.2 by a registered gift deed, dated 14.1.1987. It is stated that the respondent no.2 is the exclusive owner of the property and the property is in possession and user of the respondent no.2 since then. It is stated that after 30 years of the execution of the registered document of title in

favour of the respondent no.2, the petitioner has mischievously filed the instant petition seeking the relief, as prayed. It is stated that the Nagpur Improvement Trust has, by the communication, dated 25.5.2015, admitted the ownership of the respondent no.2.

We find, on hearing the learned counsel for the parties, that several disputed questions of facts arise for determination in this writ petition. The petitioner claims that the open space belongs to the Nagpur Improvement Trust and the respondent no.2 also claims ownership over the plot in question. A copy of a registered document is also produced by the respondent no.2 along with the affidavit-in-reply to claim ownership over the property. The issue involved in this petition can be decided only after permitting the parties to tender evidence, both oral and documentary. The petitioner would be entitled to file a civil suit, if so advised.

At this stage, Shri Puranik, the learned counsel for the petitioner, seeks the continuation of the ad-interim relief by a period of four weeks, so that the petitioner could approach the civil court. The prayer made by the learned counsel for the petitioner is strongly opposed by the learned counsel for the respondent no.2.

While declining to entertain the writ petition, we continue the ad-interim relief only for a period of two weeks, with an observation that the petitioner would not claim equity on the basis of the order of continuation of the ad-interim relief. Order accordingly. No order as to costs. The points raised in the petition are kept open.

JUDGE

JUDGE