

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

WRIT PETITION NO.3639 OF 2014

[Shri Shailesh s/o Shivdas Gupta .vs. Nagpur Municipal Corporation, Nagpur and others]

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

Court's or Judge's orders

Shri D.A. Mahajan, counsel for the petitioner,
Shri S.M. Puranik, counsel for the respondents.

CORAM : SMT. VASANTI A. NAIK AND
A.M. BADAR, JJ.

DATED : APRIL 29, 2015.

By this petition, the petitioner challenges the communication, dated 28.6.2014 issued by the Sub-Divisional Engineer of the Corporation and the notice dated 30.6.2014 directing the petitioner to demolish the illegal construction in Chambhar Nala.

According to the petitioner, the mother of the petitioner Smt. Ramrati had purchased the plot, on which the construction was made, after seeking the regularization of the said plot. It is averred in the petition that the plot is mutated in the name of the mother of the petitioner in the record of rights and the akhiv patrika is also issued in her name. It is stated that the plot in question is adjoining the Chambhar Nala.

According to the petitioner, on 3.7.2014, the staff of the respondent-Corporation came with the demolition squad and the police officials and started demolishing the construction beyond the plots of the family members of the petitioner. It is averred in the petition that though the petitioner submitted the copies of the relevant documents in his possession, which related to the title of the property, the respondents did not pay any heed and threatened to demolish the property. Since the petitioner apprehended that the respondent nos.1 to 3 would initiate action against the petitioner, in pursuance of the impugned notice dated 30.6.2014, the petitioner has filed the instant petition challenging the notice and seeking a declaration that the notice

is bad in law. The petitioner also seeks a permanent injunction restraining the respondents from initiating action of demolition of the construction on plot nos.11 and 11-B in Wanjari Layout, Nagpur.

The respondents have filed the affidavit-in-reply. It is stated therein that the petitioner is blowing hot and cold by claiming that the petitioner has the malik makbuja or absolute ownership rights on plot nos.11 and 11-B and also that the said plots are part of 1900 unauthorized layouts identified by Nagpur Improvement Trust. It is stated that the construction made by the petitioner is illegal and the same has reduced the width of the Chambhar Nala to a great extent. It is also stated in the affidavit-in-reply, on the basis of the photographs annexed to the same, that massive encroachment is made by the petitioner in the midst of the Chambhar Nala. It is denied in the affidavit-in-reply that Maharashtra Housing and Area Development Authority (MHADA) has undertaken construction of multistoried flat scheme near Chambhar Nala. Most of the averments made in the writ petition have been denied by the respondents in the affidavit-in-reply. It is stated that a part of the illegal construction made by the petitioner is demolished in July-2014 in pursuance of the notice issued by the Corporation.

We find, on a reading of the writ petition and the affidavit-in-reply filed on behalf of the Corporation, that the relief sought by the petitioner in the instant petition cannot be granted in exercise of the writ jurisdiction. The statements of facts made in the writ petition are seriously disputed by the respondents. There is word against word and the issues involved in this writ petition cannot be decided without granting an opportunity to the parties to tender evidence. The petitioner claims to be the owner of the plot on which the construction is made and the respondents claim that the construction is made by the petitioner in the Chambhar Nala by encroaching the same. It would be necessary for the petitioner to avail an appropriate remedy in the circumstances of the case. It would not be possible, in the interest of justice, to consider the issues involved in the petition in exercise of the writ jurisdiction.

The writ petition is disposed of, with no order as to costs.

However, at the request of the learned counsel for the petitioner, the ad-interim relief granted on 18.7.2014 would continue for a period of four weeks only. Order accordingly.

JUDGE

Gulande

JUDGE