

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

WRIT PETITION NO.1943/2014

Pritam s/o Madhaorao Bakde and others

...Versus...

Nagpur Improvement Trust, Nagpur, through its Chairman 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 P.V. Vaidya, Advocate for petitioners
Shri M.V. Samarth, Advocate for respondent no.1
Shri P.S. Tembhare, Advocate for respondent no.2
Shri A.C. Wasnik, Advocate for respondent no.3

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

DATE : 25.03.2015

By this petition, the petitioners seek a direction to the respondent no.1 - Nagpur Improvement Trust to take action against the illegal construction made by the respondent no.2 - Society under the provisions of Section 7 of the Maharashtra Gunthewari Developments (Regularisation, Upgradation and Control) Act, 2001.

It is the case of the petitioners that the land was purchased by the Society, from which the petitioners had purchased plots of land, from the original owner in the year 1982. It is stated that the vendor-original owner sold the same land to the respondent no.2 - Society in the year 1989. Both these Societies approached the Nagpur Improvement Trust for regularization of the plots in the layout. The applications made by

both the Societies were rejected. The petitioners herein filed Writ Petition No.1794/2009 for a direction to the Nagpur Improvement Trust to demolish the construction made by the Members of the respondent no.2 - Society on the plots illegally purchased by them. The said writ petition was disposed of in view of the statement made by the Counsel for the Nagpur Improvement Trust that the Nagpur Improvement Trust would initiate action in terms of the provisions of the Gunthewari Act. After the order dated 28.4.2009 was passed in Writ Petition No.1794/2009, several plot holders filed suits in the civil court. The trial Court has decreed the suits filed by the plot holders of the respondent no.2 – Society and it is declared by the trial Court that the plaintiffs therein are in lawful possession of the suit property and they are eligible for seeking regularization of the plots under the Gunthewari Act. By this petition, the petitioners have again sought a direction to the Nagpur Improvement Trust to initiate action against the Members of the respondent no.2 – Society under the provisions of Section 7 of the Gunthewari Act.

On hearing the learned Counsel for the parties, we find that the petitioners have filed the instant petition with a view to circumvent or bye-pass the decree passed in the civil suits filed by the Members of the respondent no.2 - Society. In the suits filed by the Members of the respondent no.2 – Society, the trial Court has held that the Members are in lawful possession of the suit property and they are eligible for regularization under the Gunthewari Act. If the petitioners are really aggrieved by the judgment in the suits filed by the Members of the respondent no.2 - Society, the petitioners have other remedies. Instead of

availing proper remedy, the petitioners have approached this Court in writ jurisdiction with a view to circumvent the decree passed by the trial Court in the cases of the Members of the respondent no.2 - Society without joining the Members of the respondent no.2 - Society as parties to this petition.

In the circumstances of the case, we are not inclined to entertain the writ petition. The petitioners may avail the remedy, in accordance with law.

In the result, the writ petition is dismissed with no order as to costs.

JUDGE

JUDGE

Wadkar