

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

Public Interest Litigation No. 74 of 2015

NIT Swimming Pool Members Association, Nagpur Ambazari Layout and
another vs. The State of Maharashtra and another.

Notes, Office Memoranda of

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

Court's or Judge's
Orders.

Dr. Mrs. R.S.Sirpurkar, Advocate for the petitioners.

Mr. D.P.Thakare, Addl. Government Pleader for
respondent no.1.

Mr. R.O.Chhabra, Advocate for respondent no.2.

Mr. F.T.Mirza, Advocate for intervenor.

CORAM: B.R.GAVAI & PRASANNA B. VARALE, JJ

DATE : 1.9.2015

Civil Application (O) no. 1573 of 2015 in P.I.L. No. 74 of 2015:

The intervention sought is by a social worker who also happened to be the Hon'ble Minister of the State Cabinet and also a good swimmer. As such the application is allowed. The intervention is permitted.

Public Interest Litigation No. 74 of 2015:

The present Public Interest Litigation has been filed by the petitioner Association praying for a direction to the respondent no.2 to produce before this Court the improvisation scheme with respect to Nagpur Improvement Trust swimming pool and quash and set aside the same being arbitrary. The petitioners have also prayed for quashing and setting aside the decision of the respondent no.2 vide which the respondent Nagpur Improvement Trust has informed the petitioners that the swimming pool would be closed for carrying out the renovation work. The petitioners have also prayed for inquiry to the illegal action of the respondent no.2 in allotting the work order vide Resolution dated 28.5.2014.

2. When the matter was listed yesterday, we had issued notice to the respondent Nagpur Improvement Trust returnable today and also granted status quo as of yesterday.

3. In response to the notice, the N.I.T. has filed its reply.

4. We have heard Dr. Mrs. Sirpurkar, learned counsel for the petitioners, Mr. D.P.Thakare, learned Addl. G.P. for respondent no.1, Mr. R.O.Chhabra, learned counsel for respondent no.2- N.I.T., and Mr. F.T.Mirza, learned counsel for intervenor.

5. It is the basic contention of the petitioners that the stand of the respondent N.I.T. that the swimming pool is being closed only for the purpose of renovation is totally false. It is submitted that the N.I.T., under the garb of renovation, is likely to construct the entire Club House at the cost of the swimming pool. It is submitted that on account of the closure of the swimming pool, the children in Nagpur City would be deprived of the facilities. It is also apprehended by the petitioners that parking, which is proposed in the project, is for the resorts and hotels owned by the private individuals in the vicinity.

6. An affidavit in reply has been filed by Shri Ashokkumar s/o Sunderlal Gour, the Executive Engineer of the Nagpur Improvement Trust. It will be relevant to refer paras 6,7 and 8 of the said affidavit in reply.

“6. It is further submitted that in the Swimming Pool complex, there are three pools for use of adult swimmers. These are (1) main Olympic size racing swimming pool, (2) Warm up pool, and (3) Diving Pool. The Nagpur Improvement Trust has also contemplated installation of Ozonization plant along with Silica-based compact filter vessels. This will help in replacing the present and obsolete practice of putting chlorine in the water.

7. It may further be submitted that the proposed construction will not in any way hamper the existing three swimming pools in the complex and the prescribed standard and specifications laid down by the FINA International Swimming Federation and Swimming Federation of India will be strictly followed. The entire construction and modernization of the swimming pools is being undertaken for the benefit of the sports persons and the swimmers and will help the swimmers in the long run to better their performance.

8. It is further submitted that the plans for modernization are undertaken from 2009 and the model of the proposed plan and construction was also displayed in the swimming pool complex. The said model is kept there since 2009. Likewise, the tenders were invited and the work order was issued to one of the contractors, M/s. S.S.Patil and Company and the work was about to start somewhere in July, 2014, in which, it was proposed to erect the screen of tin sheets considering the safety for the pool users at a safer distance of 2 meters from racing pool. The proposed construction was 5 meters away from the racing pool. But, after the protest from the members of the swimming pool, the work was temporarily stopped. Thereafter, the building plans of the proposed project were displayed in the swimming pool complex. In this project, towards the western side of the racing pool, there is a proposal of construction of ground + upper two floors, in which, the facilities of parking, meditation hall, changing rooms, yoga hall, toilet,

etc., are incorporated. Similarly, towards the northern side of the racing pool, proposed construction with two basements + ground and upper three floors is proposed. In these facilities of parking, sports, e-library, ultra modern gym, Naturopathy centre, cultural training hall, etc., are included.”

7. Since the statement was made by the learned counsel for the petitioners that in the month of September, 2015 various tournaments are already scheduled, we had requested the learned counsel appearing for Nagpur Improvement Trust to take instruction from the Nagpur Improvement Trust as to whether closure of the swimming pool could be extended by one month and instead of 1st September can the pool be closed from 1st October, 2015. We had also directed the respondent to file an undertaking of the Chairman of the Nagpur Improvement Trust so that we could bind the Nagpur Improvement Trust. Accordingly, an affidavit-cum-undertaking is also filed by Shri Shyam s/o Daulatrao Wardhane, the Chairman of the Nagpur Improvement Trust. It will be relevant to refer para no. 2 of the said undertaking

which reads thus:-

“para no.2: I state that the proposed construction will not hamper the existing three swimming pools. I further state that the repairs and renovations of these three swimming pools would be completed within a period of six months from 1st October, 2015. The modernization and repairs of the swimming pools is being undertaken for the swimmers and it will help the swimmers to better their performances. I further state that the specifications laid down and prescribed by the FINA International Swimming Federation and Swimming Federation of India will be strictly followed. Letter of Architect, Shri Karkhanis received in this regard is enclosed herewith.”

8. Perusal of the affidavit-in-reply so also undertaking by the Chairman of the Nagpur Improvement Trust would reveal that the apprehension as expressed by the petitioners is totally ill-founded. In the affidavit of the Executive Engineer as

well in the undertaking of the Chairman of Nagpur Improvement Trust, it is clearly stated that the proposed construction will not in any way hamper the existing three swimming pools in the complex. It has further been stated that the prescribed standards and specifications laid down by the FINA International Swimming Federation and Swimming Federation of India will be strictly followed.

9. Perusal of the reply would further reveal that the proposed project will have construction of ground plus upper two floors in which the facilities of parking, meditation hall, changing rooms, yoga hall, toilets, etc. are proposed. It is further stated that similarly towards the northern side of the pool, proposed construction will have two basements + ground and upper three floors. It is further stated in these facilities of parking, sports, e-library, ultra-modern gym, naturopathy centre, cultural training hall etc. are included.

10. In view of the affidavit filed by the Executive Engineer so also undertaking filed by the Chairman of the Nagpur Improvement Trust, we are of the considered view that the apprehension as expressed by the petitioners is totally ill-

founded. We make it clear that the statement made in the affidavit and undertaking that the proposed complex shall conform to the FINA International Swimming Federation and Swimming Federation of India, is treated as an undertaking to this Court.

11. We further make it clear that only such activities, which are mentioned in para no.8 of the affidavit in reply, will be permitted in the proposed complex. We make it further clear that no activities other than the one's mentioned in para no.8 of the said affidavit-in-reply would be permitted to be conducted by the respondent Nagpur Improvement Trust, without seeking leave of the court.

12. Insofar as the apprehension expressed by the learned counsel for the petitioners that the parking areas are being provided for nearby resorts, marriage halls and restaurants owned by the businessmen, who are named in the petitioner, we had asked the learned counsel for the respondent Nagpur Improvement Trust to seek instructions as to whether the parking would be restricted only for the members who are using swimming facilities or it will be open

for all.

13. Mr. Chhabra, learned counsel appearing on behalf of the Nagpur Improvement Trust makes a categorical statement that the parking facilities will be permitted only to be used by the members of the swimming pool and that the parking would not be a free parking for any one. We, therefore, make it clear that only the members of the swimming pool and only such of the persons, who would be permitted to use the activities of swimming pool and allied activities in the proposed complex, would be permitted to use parking facilities and parking would not free to one and all.

14. Dr. Mrs. Sirpurakar, the learned counsel for the petitioners also submitted that if the swimming pool is closed, it may be closed for indefinite period till the entire complex is completed. Insofar as the said apprehension expressed by the learned counsel for the petitioners regarding indefinite closer of the pool is concerned, Mr. Chhabra, the learned counsel for the Nagpur Improvement Trust, on instruction from the Executive Engineer, makes a categorical statement that the pool would be made open to the public latest by end of March,

2016.

15. There is another reason why we are not inclined to entertain the petition. Though the prayer is made to inquire into the illegal action of the respondent Nagpur Improvement Trust, in the petition there is even not a whisper that the respondent Nagpur Improvement Trust is coming up with this project so as to benefit some individuals or same is being done on extraneous consideration. On the contrary, we find that the renovation and the modernization of the facilities will in turn benefit the public at large, rather than, the same being against the public interest.

16. We find that the affidavit filed by Shri Ashokkumar Gour, so also the undertaking of Shri Shyam Daulatrao Wardhane, Chairman of the Nagpur Improvement Trust and aforesaid directions issued by us would sufficiently take care of the concerns of the petitioners. We find that no purpose would be served by keeping this public interest litigation pending.

17. Needless to state that if there is breach of any of the undertaking given in the affidavit or in the undertaking of

the Chairman of the Nagpur Improvement Trust, the petitioners would be always at liberty to approach this Court. The public interest litigation is disposed of accordingly.

JUDGE

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