

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 5985/2014

(SUNIL KUNDANDAS BALANI & OTHERS **VERSUS** THE CHIRMAN, N.I.T., NAGPUR & OTHERS)

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

Court's or Judge's orders

Shri S.A. Kalbande, counsel for the petitioners.
 Shri M.V. Samarth, counsel for the R-1.
 Shri A.S. Kilor, counsel for the R-2 to 4.

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

DATE : AUGUST 14, 2015.

By this petition, the petitioner challenges the impugned notice of the Nagpur Improvement Trust dated 26.09.2014. The petitioner also seeks a declaration that the respondent-Authorities have sanctioned the map dated 20.01.2012 in a fraudulent and illegal manner and the respondent nos.2 to 4 should not be permitted to construct the building in pursuance of the sanctioned map.

Shri Samarth, the learned counsel for the respondent no.1-Trust has tendered an additional affidavit in the Court, today. It is stated in the additional affidavit that Regular Civil Suit No.4630 of 2012 is filed by the petitioner in the trial Court against the respondent nos.2 to 4 and the notice of demolition is kept in abeyance by the Nagpur Improvement Trust till Regular Civil Suit No.4630 of 2012 is decided. It is stated that the issues involved in this petition and the civil suit are interconnected and the disputed questions of facts involved in the petition, cannot be determined in exercise of the writ jurisdiction. It is further stated that a declaration, as sought by prayer clause (ii) in this petition, is also sought by the petitioner in civil suit bearing Regular Civil Suit No.4630 of 2012. It is stated that the writ petition is not tenable and is liable to be dismissed.

In view of the statements made in the additional affidavit filed on behalf of the respondent no.1, it appears that the prayer clause (i) would not survive, at this stage. The Nagpur Improvement Trust has kept the notice for demolition in abeyance till Regular Civil Suit No.4630 of 2012 is decided. We find that a prayer similar to the second prayer made in this writ petition has been made in Regular Civil Suit No.4630 of 2012 filed by the petitioner against the respondent nos.2 to 4. It would not be proper for this Court to consider the second prayer made in this petition, in exercise of the writ jurisdiction. To prove fraud, it would be necessary for the petitioner to approach the Civil Court as the said question could be decided only after permitting the parties to tender evidence, both, oral and documentary.

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

The points raised in the petition are kept open.

JUDGE

JUDGE

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