

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

WRIT PETITION NO. 3058/2016

(AMBADAS TULSHIRAM RAMTEKE & OTHERS **VERSUS** N.I.T., NAGPUR & ANOTHER)

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

Court's or Judge's orders

Shri S.D. Chopde, counsel for the petitioners.

CORAM : SMT.VASANTI A. NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATE : JUNE 24, 2016.

By this petition, the petitioners, the Co-operative Society as well as the plot owners, who claim to have purchased the plots from the housing society, have approached this Court for a direction to the respondent no.1-Nagpur Improvement Trust to release the plots of the petitioner nos.1 to 15 in accordance with the agreement dated 28.01.2000. The petitioners seek a direction to the respondent no.1-Trust to remove the encroachment made by the Bhiku Manke on the open space of land that is liable to be released in favour of the petitioners.

It is the case of the petitioners that though the petitioners had entered into an agreement with the respondent no.1-Trust on 28.01.2000 in respect of the development of the layout and after paying the development charges, the plots were liable to be released in favour of the petitioners after the formalities were completed by the petitioners, the respondent no.1-Trust has not released the plots in favour of the petitioners though they have complied with their part of the contract. It is stated that the respondent no.1-Trust has come up with a false claim that the petitioners have not surrendered the open spaces to the Nagpur Improvement Trust, free of cost. It is stated that in terms of the agreement, the respondent no.1-Trust was liable to release the plots in favour of the petitioners. It is stated that the respondent no.2 has made the construction of a marriage hall, school and Bouddha

Vihar on the said land. Copies of some photographs have been annexed to the petition for perusal. It is stated that it would be necessary to direct the respondents to remove the illegal construction made by the respondent no.2 on the large plot of land belonging to the petitioners. Certain other ancillary prayers are also made.

The issues involved in this writ petition cannot be decided in exercise of the writ jurisdiction. The petitioners are free to avail the alternate remedy. The petitioners are seeking the release of their land in their favour on the basis of the agreement executed in the year 2000. The petitioners have claimed that though some of the plots have been released in the year 2004-05, the respondent no.1-Trust has not released the remaining plots. Also, it is averred in the petition that huge construction of a marriage hall, Bouddha Vihar and school is made on a large portion of the land and that is liable to be removed. A private party is joined as a party respondent to the writ petition and a direction is sought against the said respondent for removal of the construction. It would not be proper to consider the issues involved in this case in exercise of writ jurisdiction, more so, when we find from the documents annexed by the petitioners to the petition that the respondent no.1-Trust has informed the petitioners that the petitioners have not performed their part of agreement.

Since the issues involved in this writ petition cannot be decided in exercise of the writ jurisdiction, we dismiss the writ petition with no order as to costs.

The points raised in the petition are, however, kept open.

JUDGE

JUDGE