

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

WRIT PETITION NO.3945/2014

Pradeep s/o Narayanrao Yelne ..vs.. State of Maharashtra, through its Principal
Secretary, Urban Development Department and others

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

Court's or Judge's orders

Mr. N. A. Padhye, Advocate for petitioner.
Mr. N. R. Patil, Assistant Government Pleader for respondent no.1.
Mr. R. O. Chhabra, Advocate for respondent no.3.
Mr. P. A. Abhyankar, Advocate for respondent no.4.

CORAM : SMT. VASANTI A. NAIK AND
V. M. DESHPANDE, JJ.

DATE : APRIL 25, 2016

By this writ petition, the petitioner seeks a direction to the respondent no.3-Nagpur Improvement Trust to allot plot no. 181 situated in mouza Khamla to the petitioner.

The respondent no.4-Shastri Gruhanirman Sahakari Sanstha, a housing society, agreed to purchase 30.39 Acres of land in mouza Khamla in the year 1979 from its erstwhile owner. The said property was acquired by the Special Land Acquisition Officer for the Nagpur Improvement Trust on 27.08.1980. In 1981, Shastri Gruhanirman Sahakari Sanstha made a representation to the Nagpur Improvement Trust that the aforesaid property be released from acquisition so that the same could be allotted to its members. According to the petitioner, the respondent no.4-Shastri Gruhanirman Sahakari Sanstha entered into an agreement to allot plot no.181 in the said layout to the petitioner. It is the case of the petitioner that certain amount was also paid to Shastri Gruhanirman Sahakari Sanstha towards the allotment of the said plot. The State Government, vide its order dated 25.11.1987, sanctioned the proposal of the Nagpur Improvement Trust and granted permission to the trust to allot

the land in the said layout to the members of Shastri Gruhanirman Sahakari Sanstha. It appears that there was a dispute about part of the aforesaid plot between the respondent no.4-Shastri Gruhanirman Sahakari Sanstha and one Gajanan Sanmitra Mandal Co-operative Housing Society, Nagpur. It appears that the respondent no.3-Nagpur Improvement Trust allotted a few plots to Gajanan Sanmitra Mandal Co-operative Housing Society and some others to the respondent no.4-Shastri Gruhanirman Sahakari Sanstha and the action on the part of the Nagpur Improvement Trust to allot some plots to the Gajanan Sanmitra Mandal Co-operative Housing Society was challenged by the Shastri Gruhanirman Sahakari Sanstha in Writ Petition No.3486/1994. The matter between Gajanan Sanmitra Mandal Co-operative Housing Society and the respondent no.4-Shastri Gruhanirman Sahakari Sanstha was compromised in the year 2004 and plot no.181 which, according to the petitioner, was sought to be allotted to the petitioner was allotted to Gajanan Sanmitra Mandal Co-operative Housing Society in the said compromise. It is the case of the petitioner that the petitioner was not aware about the transaction between Gajanan Sanmitra Mandal Co-operative Housing Society and Shastri Gruhanirman Sahakari Sanstha. It is stated that the petitioner made application to the Nagpur Improvement Trust seeking the allotment of plot No.181 to the petitioner. Since, the applications of the petitioner were not favourably considered, the petitioner has filed the instant petition seeking a direction against the Nagpur Improvement Trust to allot plot no.181 to the petitioner.

It is stated on behalf of the petitioner that if the Nagpur Improvement Trust is not in a position to allot plot no. 181 to the petitioner, the Trust may allot some other plot to the petitioner as the petitioner had entered into the agreement with Shastri Gruhanirman Sahakari Sanstha for the purchase of

plot no. 181. It is stated that the petitioner was not aware about the dispute between Gajanan Sanmitra Mandal Co-operative Housing Society and Shastri Gruhanirman Sahakari Sanstha and that Gajanan Sanmitra Mandal Co-operative Housing Society was allotted plot no. 181 in view of the compromise between the two societies. It is submitted that the petitioner had paid some amount towards the allotment of plot no. 181 and a direction to the Nagpur Improvement Trust to allot plot no.181 or any other plot to the petitioner would be necessary.

On hearing the learned counsel for the parties, it appears that the relief sought by the petitioner cannot be granted in exercise of the writ jurisdiction. It is the case of the petitioner that the petitioner had entered into an agreement with Shastri Gruhanirman Sahakari Sanstha for the allotment of plot no.181. There was a serious dispute between Gajanan Sanmitra Mandal Co-operative Housing Society and Shastri Gruhanirman Sahakari Sanstha in respect of a part of the land that was agreed to be purchased by Shastri Gruhanirman Sahakari Sanstha in the year 1979. The said dispute was compromised between the two societies in the year 2004 and the writ petition filed by Shastri Gruhanirman Sahakari Sanstha was withdrawn. It appears that in terms of the said compromise, Gajanan Sanmitra Mandal Co-operative Housing Society was allotted plot no.181 that was agreed to be allotted to the petitioner by the respondent no.4- Society. If the petitioner is duped by the respondent no.4-Shastri Gruhanirman Sahakari Sanstha and if the respondent no.4 is not in a position to allot plot no. 181 that was agreed to be allotted to the petitioner, it would be necessary for the petitioner to file appropriate proceedings against Shastri Gruhanirman Sahakari Sanstha, if the petitioner is so advised and if permissible in law. However, a direction cannot be issued against the Nagpur Improvement Trust, with whom the petitioner had no privity of

contract. Moreover, plot no.181, that was sought to be allotted to the petitioner, is already handed over to Gajanan Sanmitra Mandal Co-operative Housing Society by Shastri Gruhanirman Sahakari Sanstha. The said plot is no more in the layout of the respondent no.4-Society. The said compromise was effected in the year 2004. The petitioner has never challenged the said compromise at any point of time. The writ petition is filed 10 years later i.e. on 25.03.2014. In any case, the petitioner would not have any semblance of right to claim a plot of equal area or measurement from the Nagpur Improvement Trust with whom the petitioner does not have any privity of contract. Even if, there was any, such a matter could not have been decided in exercise of the writ jurisdiction. Instead of availing the appropriate remedy, the petitioner has approached this Court to seek a direction against the Nagpur Improvement Trust to allot a plot of land to the petitioner.

Since the relief sought by the petitioner cannot be granted in exercise of the writ jurisdiction, we dismiss the writ petition with no order as to costs.

JUDGE

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