

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

CIVIL APPLICATION (CAW) NO.858/2016 IN WRIT PETITION NO.55/2004

Shri Sunil Shamraoji Shinde

..Versus..

State of Maharashtra, through its Urban Development Department, Mantralaya,
Mumbai and others

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

Court's or Judge's orders

CORAM : P.B. VARALE AND Z.A. HAQ, JJ.

DATE : 13.4.2016

P.C.

This application is filed by S.G. Gautam - respondent no.2 in the writ petition praying that the order passed by this Court on 9th March, 2016 be recalled.

Shri S.S. Sanyal, advocate for respondent no.2 - S.G. Gautam has submitted that the order passed by this Court on 9th March, 2016 directing that work should not be allotted to S.G. Gautam and E.Z. Khobragade until further orders is causing unwanted hardships to the applicant and the applicant is deprived of his legal right of performing his duties and getting emoluments. It is submitted that the order passed on 9th March, 2016 is without considering that the disciplinary enquiry is conducted against the respondent no.2 which culminated in the order dated 11th

November, 2015 by which penalty of stoppage of two increments without cumulative effect is imposed on him. It is submitted that the respondent no.2 has filed appeal under Rule 23 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (for short "Rules of 1979") against the order of punishment and it is pending before the Appellate Authority. It is submitted that it will not be appropriate for this Court to issue any directions against the respondent no.2, under Article 226 of the Constitution of India when the matter is *sub judiced* before the Appellate Authority and the proposal of *de novo* enquiry against the respondent no.2 as is being considered by this Court is premature as the entire matter is before the Appellate Authority under the Rules of 1979. The learned advocate has submitted that the respondent no.2 is Chairman, Caste Scrutiny Committee, Amravati and in view of the order passed by this Court on 9th March, 2016 he is not able to perform his duties and the post is vacant. It is submitted that the order passed by this Court on 9th March, 2016 has the effect of punishing the respondent no.2. On the above submissions, it is prayed that the order passed by this Court on 9th March, 2016 be recalled and the State Government be directed to allot the work to the respondent no.2.

Writ Petition No.55/2004 came to be filed with the grievance that land admeasuring 51750 Sq. Mtrs. at Nagpur was illegally allotted to respondent no.4, who was at the relevant time Cabinet Minister and Guardian Minister of Nagpur. While considering the grievance raised in the petition, this Court took up the issue in the form of public interest litigation as it transpired that valuable land in and around city of Nagpur admeasuring 37192242.56 Sq. Mtrs. was allotted to various institutions/societies in flagrant violation of Rules. One man Commission (Shri R.K. Batta, retired Judge of this Court) was appointed to enquire into the illegality of the allotments of land. The commission submitted its report observing various irregularities and illegalities in the allotments and recommended disciplinary action against certain officers including S.G. Gautam and E.Z. Khobragade who were at the helm of affairs at the relevant time. The Commission observed that the concerned officers committed illegalities and irregularities and the lands were allotted overlooking the statutory provisions and Rules and even without examining the entitlement of the allottee and the purpose for which the land was to be used by the allottee. The State Government acted on the report given by the Commission. The

State Government instituted disciplinary enquiry against the officers. The disciplinary enquiry against the respondent no.2 was initiated in 2010 and dragged till 11th November, 2015 on which date the order was issued by the State Government imposing penalty of stoppage of two increments without cumulative effect. The disciplinary enquiry against E.Z. Khobragade is yet not complete.

After considering the observations of the Commission and the submissions made on behalf of the State Government at the time of hearing of the petition and considering the state of affairs and the fact that the respondent no.2 - S.G. Gautam occupied the post of Chairman, Caste Scrutiny Committee and E.Z. Khobragade, after his age of superannuation was appointed as Member, Maharashtra Revenue Tribunal, we could not stop ourselves from passing the order dated 9th March, 2016.

By the above order, show cause notice is issued to the above named officers calling for their explanation as to why *de novo* disciplinary enquiry should not be directed against them. In pursuance of the notice, above officers have filed their submissions. We *prima facie* found that the relevant charge/charges which should have been there, are not even framed in the disciplinary

proceedings and *prima-facie* it appears that the conducting of disciplinary enquiry is a farce and an eye wash. We are hearing the learned advocates representing the cause of public at large, the Government Pleader/Additional Government Pleader and the advocates for the concerned officers. The directions given to the State that work should not be allotted to S.G. Gautam and E.Z. Khobragade are interim orders. We enquired with the learned Additional Government Pleader Shri S.M. Ukey as to whether the State Government has issued any orders directing that the emoluments receivable by the above named officers should be withheld. The learned Additional Government Pleader has informed that State Government has not issued any such directions.

In the above circumstances, it cannot be said that the order passed on 9th March, 2016, which is in the nature of interim arrangement until we pass further orders, adversely affects the respondent no.2 - S.G. Gautam or has the effect of penalizing him.

In view of the above, we do not find any substance in the application. It is **dismissed**.

JUDGE

JUDGE