

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

WRIT PETITION NO. 5901 OF 2014

Pioneer Green Valley Resident Association, thr.its Secretary, Nagpur and others

-vs-

The Nagpur Municipal Corporation, thr.its Commissioner, Nagpur and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. Abhijeet Sambaray, counsel for the petitioners.
Mr. J.B.Kasat, counsel for the respondent No.1.
Mr. S.M.Ukey, Addl.G.P. for the respondent No.2.
Mr. C.M.Samarth, counsel for the respondent No.3.

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

DATE : 22.04.2016.

By this writ petition, the petitioners, Housing Societies have sought a direction to the respondents to shift the cremation ground on the part of Khasra No.90, Nagar Bhumapan No.204, area 4526.84 sq.mtrs., Mouza Hazari Pahad, Nagpur to any other place reserved for the crematorium in the development plan for the City of Nagpur. By amending the writ petition, the petitioners have sought a direction that the act of the respondents to convert land Khasra No.90, Nagar Bhumapan No.204, area 4526.84 sq.mtrs. from residential zone to non-residential zone and then reserving it for a cremation ground and shifting the cremation ground on the said land, is illegal.

According to the petitioners, some residents had filed Writ Petition No.4481 of 2006 objecting to the cremation ground (not the cremation ground in this writ petition) in the residential area of Hazari Pahad. In the said writ petition, a statement was made on behalf of the respondent No.1-Municipal Corporation that the Corporation had submitted a proposal for shifting of the site of the then existing cremation ground to some other suitable location to the State

Government on 27/06/2008. To the said affidavit-in-reply, the site, where the cremation ground is now existing was mentioned. Since it was informed by the Corporation in the said writ petition that the cremation ground would be shifted from the earlier location to the present location with which we are concerned, Writ Petition No.4481 of 2006 was disposed of after observing that the grievance of the petitioners was redressed. The petitioners therein were permitted to move the Court again, if the Corporation failed to take steps within a reasonable time. In pursuance of the proposal of the Municipal Corporation, proceedings for modification of the final development plan, so as to change the site of crematorium were initiated under Section 37 of the Maharashtra Regional and Town Planning Act. It appears that the site on which the cremation ground is presently located is reserved for the cremation ground as per the modified development plan. In view of the modification of the final development plan reserving the site on which the cremation ground now exists, the petitioners have amended the writ petition to seek a declaration that the conversion of the land from residential zone to non-residential zone and then for the cremation ground, is illegal. However, the Notification published by the State Government, making a modification in the reservation, under Section 37(2) of the Act of 1966 is not challenged by the petitioners.

It is the case of the petitioners that the cremation ground is causing great nuisance to the petitioners, as the petitioners are residing in the near vicinity of the same. It is stated that before the issuance of the Notification under Section 37(2) of the Act of 1966, the respondents had not followed the due procedure. It is stated that though a statement was made by the Corporation in Writ Petition No.4481 of 2006 that they would change the site of crematorium, the site was not substantially changed and the cremation ground was merely shifted from one side of the nullah to the other side of the nullah. It is submitted that in the circumstances of the case, a direction

may be issued to the respondents to shift the cremation ground from Khasra No.90, Nagar Bhumapan No.204, area 4526.84 sq.mtrs. to some other place.

Shri Kasat, the learned counsel for the respondent No.1- Municipal Corporation, submitted that in the earlier writ petition that was filed by the other residents of Hazari Pahad, it was categorically pointed out by the Nagpur Municipal Corporation that they had proposed to shift the cremation ground from the site on which it was existing at the time of disposal of the writ petition on 24/07/2008 to the present site. It is stated that by Annexure-4 to the affidavit-in-reply filed in the previous petition, the Corporation had pointed out that the site of cremation ground was proposed to be shifted to the site, where it is now existing. It is submitted that in pursuance of the statement made by the Corporation before this Court in Writ Petition No.4481 of 2006, the matter for modification of the final development plan was persuaded by the Corporation with the State government and after completing the formalities under Section 37 of the Act of 1966, the Notification under Section 37(2) of the Act was published in the official gazette, thereby shifting the site of the cremation ground from the place where it existed earlier to the present site, in respect of which the petitioners have a grievance. It is stated that despite the issuance of a notice calling for objections to the modification of the development plan, with proposal to change the site of the cremation ground, the petitioners did not raise any objection. It is stated that after following the due procedure as required by the provisions of the Act of 1966, land Khasra No.90, Nagar Bhumapan No.204, area 4526.84 sq.mtrs. was reserved for cremation ground. It is submitted that the petitioners have not made out any case for issuance of a direction to the respondent-Corporation to shift the cremation ground to some other site. It is submitted that the petitioners have purchased the properties with open eyes though the cremation ground was existing in the nearby nullah at the time of purchase of the properties

and now the petitioners have filed the instant petition seeking the shifting of the cremation ground to some other site. It is submitted that in the circumstances of the case, the writ petition is liable to be dismissed.

On hearing the learned counsel for the parties, it appears that no case is made out by the petitioners for granting the relief sought in the instant petition. It appears on a reading of the order, dated 24/07/2008 in Writ Petition No.4481 of 2006 that the petitioners therein had a grievance about the existence of the cremation ground in a nullah, which was near the residence of the petitioners in the said case. A statement was made by the Corporation in the affidavit-in-reply in the said writ petition that they would shift the existing cremation ground to some other suitable location. The location was mentioned in Annexure-4 that was annexed to the affidavit-in-reply. The said location was the present site on which the cremation ground is existing and for which the petitioners have a grievance. The petitioners in the earlier writ petition were satisfied with the statement made on behalf of the Corporation and since the grievance of the petitioners in the said writ petition was redressed, this Court disposed of the writ petition. After the said writ petition was disposed of and the site of the cremation ground was shifted in the year 2009, after making a modification in the final development plan and reserving the present site for the cremation ground in the year 2009, the petitioners filed the instant petition on 05/09/2014, i.e. almost five years later, for a direction to the respondents to shift the cremation ground to some other site. It appears that the cremation ground was shifted to the present site, in view of the statement made by the Corporation in Writ Petition No.4481 of 2006. The petitioners therein were satisfied with the shifting of the cremation ground from the site where it was existing earlier to the present site. The petitioners in this writ petition are however, aggrieved by the existence of the cremation ground on the site that is reserved for the same as per the

final development plan, published in the year 2009. The petitioners did not take any action in the matter for almost five years till they filed the present writ petition. Also, the petitioners had not raised any objection to the modification of the final development plan when the procedure was followed by the respondents for modification of the final development plan, as per Section 37 of the Act of 1966. In this background, the petitioners would not have any legal backing to challenge the existence of the cremation ground on the site in Khasra No.90, Nagar Bhumapan No.204, area 4526.84 sq.mtrs. In the absence of any legal right to challenge the action on the part of the respondents Corporation and the State Government, a direction cannot be issued against the respondents to change the site of the cremation ground, merely on an allegation that the cremation ground is causing nuisance to the petitioners.

Since no case is made out by the petitioners for grant of relief, we dismiss the writ petition with no order as to costs.

JUDGE

JUDGE