

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

WRIT PETITION NO.511/2016

Onkar s/o Govindrao Madekar and another
...Versus...

The State of Maharashtra, through its Collector, Nagpur and others

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

Court's or Judge's orders

Shri P.V. Bhoyar, AGP for respondent nos.1 and 2
Mrs. Radhika Bajaj, Advocate for respondent no.3

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

DATE : 21.03.2016

By this petition, the petitioners have sought a direction to the respondents to remove the drainage (Nali) of the waste water flowing from the Khedkar Layout, Mahajan Layout, Dhumne Layout, Panchasheel Nagar and Dhot Layout and thereafter from the underneath of the railway bridge located towards the southern side of the fields of the petitioners.

According to the petitioners, the drainage constructed by the respondent no.3 is causing severe damage to the fields and crops of the petitioners. It is stated that the waste water is flowing from the layouts mentioned herein above through the constructed cement concrete drainage and the same reaches to the fields of the petitioners and is accumulated in the fields.

Mrs. Bajaj, the learned Counsel for the respondent no.3 has tendered an affidavit-in-reply in the Court today. The same is accepted on record. The averments, made by the petitioners, pertaining to the damage caused to the fields of the petitioners due to the water flowing from the drainage constructed by the respondent no.3, are denied by the respondent no.3. It is stated on behalf of the respondent no.3 that the drainage is sufficiently deep and the water does not overflow from the same. It is further denied that the water from the drainage overflows into the fields of the petitioners regularly and the same is accumulated in the fields. Certain photographs are annexed to the affidavit-in-reply filed on behalf of the respondent no.3 to substantiate the submission that the water from the drainage is not causing any damage to the fields of the petitioners.

On a perusal of the writ petition and the affidavit-in-reply filed on behalf of the respondent no.3, it appears that it would not be proper to decide the issues involved in this writ petition in exercise of the writ jurisdiction. There is word against word, inasmuch as the petitioners are claiming that the waste water from the drainage flows into the fields of the petitioners and is accumulated there and the said fact is seriously disputed by the respondent no.3. It appears that certain photographs are annexed to the petition to point out that the water from the drainage is causing damage to the fields of the petitioners, whereas copies of certain photographs are annexed to the affidavit-in-reply filed on behalf of the respondent no.3 to show

otherwise. It would be necessary for the petitioners to approach the Civil Court for seeking the relief, as sought in the instant petition. The issues involved in this writ petition would require tendering of oral as well as documentary evidence.

Hence, we decline to entertain the writ petition. The writ petition is disposed of with no order as to costs. The points raised in the petition are kept open.

JUDGE

JUDGE

Wadkar