

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

WRIT PETITION NO. 139 OF 2016

Dr. Zakir Hussain Urdu High School and Junior College, Pulgaon, Distt. Wardha, through its
 President Abdul Razzaque Khan Abdul Kadar

-vs-

The State of Maharashtra, thr.the Secretary, Deptt. of Revenue and Forest 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. Mohd. Ateeque, counsel for the petitioner.
 Mr. Ambarish Joshi, AGP for the respondent Nos.1 to 3.
 Mr. Abhay Sambre, counsel for the respondent No.4.

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

DATE : 04.07.2016.

By this writ petition, the petitioner seeks a direction to the respondents to remove the encroachment from the land in Plot Nos.27/1 and 27/3 of Mouza Pulgaon. The petitioner seeks a direction against the respondents to decide the representation of the petitioner seeking the removal of the encroachment on the aforesaid land.

According to the petitioner, Plot Nos.27/1 and 27/3 that belong to the State Government were allotted to the petitioner for running an Educational Institution in the year 2006. The allotment of the said land to the petitioner was challenged by the respondent No.4-Municipal Council in a writ petition without any success. After the Letters Patent Appeal filed by the respondent No.4-Municipal Council was dismissed, the Collector was directed to hand over the possession of the land to the petitioner, free of encroachment. It is the case of the petitioner that though the respondent No.2-Collector handed over the vacant possession of the land to the petitioner, free of encroachment, the respondent No.4-Municipal Council prevented the petitioner from fencing the land and again the land is encroached upon. The petitioner has, therefore, sought a direction against the respondents to remove the encroachment on the said land.

Shri Ambarish Joshi, the learned Assistant Government Pleader appearing on behalf of the State Government, states on instructions that the vacant possession of the land was delivered in favour of the petitioner on two occasions, once on 04/03/2008 and secondly on 18/06/2015. It is stated that it is not possible for the State Government to time and again remove the encroachment from the land if, the petitioner is not in a position to safeguard its interest. It is stated that the petitioner should have taken appropriate steps to ensure that the land is not encroached, after the vacant possession of the same was handed over to the petitioner on 18/06/2015.

Shri Abhay Sambre, the learned counsel for the respondent No.4-Municipal Council, has denied the adverse allegations, that are made against the respondent No.4-Municipal Council. It is stated that the respondent No.4 has no role to play in the matter and the petitioner should have taken appropriate steps to ensure that the land is not encroached upon.

On hearing the learned counsel for the parties, we find that the relief sought by the petitioner cannot be granted, in exercise of the writ jurisdiction. In pursuance of a direction issued by this Court in a Letters Patent Appeal, filed by the respondent No.4-Municipal Council, the respondent No.2-Collector through the Tahsildar, Deoli had delivered the vacant possession of the land to the petitioner on 18/06/2015. The petitioner does not dispute that the vacant possession of the land was delivered to the petitioner. The case of the petitioner that after the vacant possession of the land was delivered to the petitioner, the respondent No.4-Municipal Council prevented the petitioner from fencing the land and hence the land was again encroached upon, cannot be decided, in exercise of the writ jurisdiction. If the vacant possession of the land was delivered to the petitioner on 18/06/2015, it was necessary for the petitioner to file appropriate proceedings to ensure that the respondent No.4 or any other party, for that matter, does not prevent the petitioner from utilizing the land for the purpose for which it was allotted and/or from

fencing the land. When the vacant possession of the land is delivered to a party by the State Government, the party cannot again approach the High Court in writ jurisdiction with a case that it was not able to safeguard the property and the State Government should be directed to remove the encroachment. The judgment reported in *AIR 2011 SC 1123 (Jagpal Singh and ors. v. State of Punjab and ors.)* and relied on by the counsel for the petitioner cannot be applied to the facts of the case. In the said case, the land belonged to the Gram Panchayat and since the trespasser had encroached upon the same by muscle and money power, the Court had directed that the land be handed over to the Gram Panchayat, free of encroachment. In the instant case, the land was admittedly delivered to the petitioner, free of encroachment, on 18/06/2015 and the petitioner could not protect the land by taking appropriate steps.

In view of the aforesaid, we dismiss the writ petition with no order as to costs. The petitioner is free to file appropriate proceedings against the encroachers. Order accordingly.

JUDGE

JUDGE