

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

WRIT PETITION NO.613 OF 2015

[Sau. Perna w/o Pundlikrao Sambhe .vs. Nagpur Improvement Trust, 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 R.R. Vyas, counsel for the petitioner,
Mrs. B.H. Dangre, counsel for respondent nos.1 to 3,
Shri D.M. Kakani, counsel for respondent no.4,
Shri V.V. Bhangde, counsel for respondent no.5.

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CORAM : SMT. VASANTI A NAIK AND
KUM. INDIRA JAIN, JJ.

DATED : AUGUST 20, 2016.

By this writ petition, the petitioner seeks a direction against the respondent nos.1 to 3, the Nagpur Improvement Trust, Nagpur and its officers to act in accordance with the resolution passed by the respondent no.4-Housing Society, on 31.5.2014 and allot plot no.149 jointly to the petitioner and the respondent no.5.

According to the petitioner, though there is an agreement between the Nagpur Improvement Trust and the respondent no.4-Housing Society, of which the petitioner is a member, that the Nagpur Improvement Trust would allot the residential plots to the society after the development, clause (e) of the said agreement is not complied with by the Nagpur Improvement Trust and the Nagpur Improvement Trust has wrongfully allotted plot no.149 in favour of the respondent no.5, though the petitioner is jointly entitled for allotment of the said plot along with the respondent no.5.

Shri Kakani, the learned counsel for the respondent no.4-society, has supported the claim of the petitioner. It is stated that the Nagpur Improvement Trust has wrongly relied on a communication of the society, of the year 2009 to allot the plot in favour of the respondent no.5. It is stated that after 2009, the society has served several communications on the Nagpur Improvement Trust asking it to

jointly transfer plot no.149 in the name of the petitioner and the respondent no.5.

Mrs. Dangre, the learned counsel for the respondent nos.1 to 3 states, on the basis of the affidavit-in-reply of the respondents, that the allotment of the plot in favour of the respondent no.5 is based on a communication of the society, dated 21.5.2009. It is stated that as per the provisions of the Development Control Regulations (DCR), the plot cannot be allotted to two persons jointly, as the plot is of a smaller size on the southern side. It is stated that if the plot is of a smaller size on the southern side, it cannot be jointly allotted to two persons as a construction cannot be made on the southern side in view of the DCR.

On hearing the learned counsel for the parties, we find that several disputed questions of facts arise for determination in this writ petition. By filing this writ petition, the petitioner is seeking the performance of an agreement that is executed between the Nagpur Improvement Trust and the respondent no.4-Society to which the petitioner is not a party. It is alleged by the petitioner that the Nagpur Improvement Trust has breached the conditions in the agreement, dated 26.2.1993. It would not be proper to consider and decide the issues involved in the petition in exercise of the writ jurisdiction, specially when several disputed questions of fact arise for determination.

In view of the aforesaid, we decline to entertain the writ petition. The petitioner is free to take up appropriate proceedings in accordance with law. The writ petition stands disposed of with no order as to costs. The points raised in the petition are kept open.

JUDGE

JUDGE

C E R T I F I C A T E

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