

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

WRIT PETITION NO. 4365/2018

Ranjana Anand Koche & others

..VS..

State of Maharashtra & ors.

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

Court's or Judge's orders

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

DATED : 19/07/2018

1] Heard Advocate Bhandarkar for petitioners, Shri Ukey, learned Addl. GP for respondent nos. 1 to 5. Petition is considered alongwith C.P. No. 168/2014 and Advocate Mirza who appears for petitioners in that contempt petition has also assisted the Court.

2] In contempt petition, this Court has taken cognizance of grievance that order of this Court dated 19/12/2008 and the breach continues even on the date of filing of petition. The fact that breach continues even today is accepted by respondent /Shri Anoop Kumar, Divisional Commissioner of Nagpur in his affidavit sworn on 11/07/2018. In that affidavit in para nos. 7 and 8, he has accepted mistake on his part and also affirmed that possession of remaining 22 plots should have been handed over to NMC. He has tendered unconditional apology therefor and given an undertaking to remove those encroachments immediately after expiry of period of notice i.e. 7 days.

3] Petitioners in writ petition claimed to be owners of those 22 plots. These 22 plots have surfaced as plots open to sky i.e. without any construction after a survey conducted by responsible revenue officers and municipal authorities. On the basis of that survey, the orders were passed and Divisional Commissioner was supposed to handover possession of these 22 plots also to Municipal Commissioner for its safe keeping.

4] Orders passed by us in contempt petition show how the issue was dealt with by the authorities thereafter. A statement was made that encroachment on P.U. Lands/open spaces would be regularized and some time was then spent in that process. Ultimately that exercise was given up. Government Pleader appearing on 21/04/2016 fairly points out that opinion of Advocate General was obtained by Government about two years back i.e. sometime in May, 2014 and then it became clear that regularization is not possible. This Court has taken note of the statement made by Government Pleader on 21/04/2016 and proceeded to pass appropriate orders.

5] It is to be noted that State Government also came up with a case that other land equal in area shall be made available to Co-operative society to compensate for land which has been constructed upon illegally. Other side has claimed that no such "other land" was available. In contempt petition, this Court has passed few orders to examine the correctness and bonafides of this stand. The stand later on has been given up and Divisional Commissioner has tendered apology and undertaken to hand over possession of 22 plots as mentioned supra. This Court then had attempted to find out whether alternate land offered by State Government was

really in existence or not. When this scrutiny began, affidavit of Divisional Commissioner mentioned supra has been filed.

6] Our order dated 21/04/2016 passed in contempt petition reads as follows:-

“During arguments, learned Government Pleader has pointed out that about two years back, opinion of Advocate General was obtained and it transpired that exercise of regularization cannot be undertaken. Hence, removal of encroachment is the only solution.

We find that these developments have not been pointed out to the Court by filing affidavit of any responsible Officer.

The State Government filed a review application and no effective steps were taken to bring it before the Court so as to obtain appropriate orders.

The petitioners also did not take prompt steps to see that their grievance is redressed. Both parties are making allegations against each other and we find that petitioners as also respondent have not acted diligently in the matter.

The petitioners before this Court are individuals, who may be induced by various motives. However, Government Officers have duty to see that orders passed by the Court are implemented. It is not in dispute that constructions, which have come up, are not in accordance with law and after various orders of this Court, in November 2014, out of 77 plots then found to be open, possession of 51 plots only could be handed over to Nagpur Municipal Corporation. The report prepared by Collector mentions

that constructions have come up on 25 plots and 1 plot out of 77 plot is shown to be a duly sanctioned plot in the layout. Thus, between 2008 and 2014, out of 77 plots, 25 plots have ceased to be open plots.

The responsibility for the same will be required to be fixed in the matter. The respondent has not filed any affidavit pointing out the situation prevailing today.

In earlier orders, we have made some observations, which show non inclination on the part of Executive to implement provisions of law and orders of this Court. We will examine that aspect little later in the matter.

The orders of this Court passed initially in Writ Petition No.1515/2008 (treated as Public Interest Litigation on 19/12/2008) are very clear. In view of statement made today, it is apparent that regularisation is not feasible. In this situation, the Bureaucracy has in the light of material available on record permitted further encroachment and constructions to come up.

After November 2014, situation till date will also require consideration.

The orders of this Court are very clear. We can pass appropriate orders against the respondent. However, taking overall view of the matter, we grant respondent time of one week more to show his bonafides.

We place matter for further consideration on 28/4/2016. The respondent shall remain present on that date with suitable affidavit.

Copy of this order be given to the learned Government Pleader. ”

7] We therefore find substance in submission of Advocate Mirza that structures if any on these 22 plots have come up later on.

8] Petitioners seek protection under the umbrella of proposed regularization. However, records before this Court show that no such proposal is pending with State Government.

9] Petitioners have failed to establish any legal right in them. They have not produced before Court a sanctioned layout map in which their plots find inclusion as a sanctioned plot. It is apparent that during pendency of contempt petition, because of inaction on part of respondents, further encroachments have come up.

10] This finding also gets support from affidavit tendered by Divisional Commissioner who mentions number of encroachments to be 390.

11] As there is no legal right in petitioners, we find their grievance and prayers in the matter misconceived and erroneous.

12] However, considering the fact that petitioners who claim to be either owners or occupiers of these 22 plots appear to be from a poor strata of society and on-set of rainy season, we grant them time till 30/09/2018. Respondents shall proceed with further execution of notice served upon petitioners after said date.

13] Subject to this direction, writ petition is dismissed.

JUDGE

JUDGE

Ansari