

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

PUBLIC INTEREST LITIGATION NO.67 OF 2017
(Taj Ahmad Raja vs. Government of Maharashtra and others)
WITH PUBLIC INTEREST LITIGATION NO.98 OF 2017
(Haji Aslam Khan s/o Haji Amiruddin vs. State of Maharashtra and others)

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

P.I.L. NO.67 OF 2017

Shri R.B. Khan, Advocate for petitioner.
Shri D.P. Thakare, Additional Government Pleader for respondent nos.1 and 2.
Shri G.A. Kunte, Advocate for respondent nos.3, 4 and 5.
Shri A.M. Quazi, Advocate for respondent no.6.
Shri A. Betharia, Advocate for respondent no.7

P.I.L. NO. 98 OF 2017

Dr. A.H. Jamal, Advocate for petitioner.
Shri D.P. Thakare, Additional Government Pleader for respondent no.1.
Shri G.A. Kunte, Advocate for respondent no.2.
Shri A.M. Quazi, Advocate for respondent no.3.
Shri V.S. Mohod, Advocate for respondent no.4.

CORAM : B.R. GAVAI AND M.G. GIRATKAR, JJ.

DATED : MARCH 7, 2018

Present public interest litigations have been filed by the petitioners contending therein that there are irregularities and illegalities in developmental work that is being carried out at Tajbagh.

2) Taking into consideration the nature of allegations, this Court vide order dated 10/1/2018 had permitted Superintending Engineer of the State Public Works Department, Division No.I, Nagpur to pay visit to the site and submit his inspection report within two weeks.

3) In pursuance to the order dated 10/1/2018 passed by this Court,

Shri Prashant D. Naoghare, Superintending Engineer has filed affidavit dated 30/1/2018. Along with affidavit, he has filed a detailed report of the inspection carried out by him along with Shri Rajiv Pimple, Executive Engineer (Project), NIT, Shri Pankaj Patil, Assistant Engineer Grade-I (Project), NIT, Shri Humed Sheikh, Junior Engineer (Project), NIT and team of Architect Shri Ashfaque Ahmed.

4) We find that in order to appreciate the contention of the petitioners that the construction is being carried out in an illegal and unauthorized manner, it will be appropriate to refer to the report submitted by the Committee. The same reads thus :

“The development of Tajbag at Nagpur has been administratively approved vide Planning Department, Government of Maharashtra GR No. Ta-Vi-Aa-2013/Pra.kra.16/Ka.1443, dated 30th September 2013 for Rs.132.49 crores. The works are to be carried out in 2 phases costing Rs.26.39 cr. and Rs.106.10 cr.

The work is to be executed by Nagpur Improvement Trust as per the said G.R. No. Ta-Vi-Aa-2013/Pra.kra.16/Ka.1443, dated 30th September 2013.

For the purpose of planning, preparation of detailed estimate, drawings, structural design, periodic supervision and other allied activities, the Nagpur Improvement Trust has appointed Architect M/s. Ashfaque Ahmed Consultation Pvt. Ltd., Nagpur. The architect so appointed is responsible for periodic supervision of work as per the agreement and specifications and has to report to Engineer in-charge periodically. He has to provide consultations and coordination with all other consultants and experts. As per the agreement, the architect has to appoint qualified and experienced team of engineers for periodical supervision and monitoring the construction work. All this makes the architect responsible for the execution and supervision of work.

The Nagpur Improvement Trust has taken up about 18

separate works under the said project of which 11 works have been completed and remaining 7 works are in progress. The progress report of these works upto 20th January 2018 is annexed herewith. In each of the agreement of works, there is provision of sampling and testing of materials which is obligatory on the part of the Contractor to assess the quality of work.

The project of the Development of Tajbag undertaken by the Government is very prestigious and the works undertaken are of exclusive architecture. It involves the use of high grade construction materials to give the structure ornamental look. This is cost intensive too. The extraordinary minute supervision is essentially required. The present system of Nagpur Improvement Trust having appointed the architect and making him responsible for supervision has assisted the overall supervision system of Nagpur Improvement Trust. The place of work is always crowded by the pilgrims and hence, the progress of work cannot be achieved as required. The place is being of religious importance cannot be closed at any time to ease the construction activities. Also the peculiar ornamental work involved in the few of the works, requires great perfection and equally need to be carried out with all safety precautions. The architect appointed by Nagpur Improvement Trust has sufficient manpower to supervise the works diligently. Based on this supervision, the Nagpur Improvement Trust authorities are carrying out further official activities as per the procedure.

Considering the importance of the project, the work needs to be supervised by the engineers of Nagpur Improvement Trust at different level. During the discussion in site inspection with Nagpur Improvement Trust engineers, it was reported that the Superintending Engineer (Project), NIT and Executive Engineer (Project), NIT makes the visits to the various projects in the city including the project of Development of Tajbag.

The materials used in the works have been tested in laboratories as well as at field as per the conditions of contract. Few of the test reports have been shown during the site inspections. The register of inspections of Nagpur Improvement Trust Engineers is also shown during the site inspection.

The supervision system in Nagpur Improvement Trust is similar to the supervision of State Government Public Works Department, i.e. the Junior Engineer or Assistant Engineer is the in-charge of the site under the control of Dy. Engineer, who is whole and sole responsible to the Executive Engineer. The Jr. Engineer takes the measurements of works as prepared by the architect and the measurements are subsequently checked by Dy. Engineer and Executive Engineer. However, the architect is primarily responsible for the overall supervision and execution of the works. Few samples of the materials being used are tested from the Government laboratories.

In this scenario, the supervision system adopted by Nagpur Improvement Trust for the said work is proper. Considering importance and special type of work, the Nagpur Improvement Trust Engineers must visit the site as per the frequency as below :

- | | | |
|----------------------------|---|--------------------|
| 1. Junior Engineer | - | Daily |
| 2. Deputy Engineer | - | Once in 3 days. |
| 3. Executive Engineer | - | Once in a week. |
| 4. Superintending Engineer | - | Once in fortnight. |

It is advised that the inspection notes regarding quality and progress of work may be drawn by the Superintending Engineer as per the site visits as above.

At the time of site inspection, these works are found to be proper as per visual observations. Photographs of few completed works are also annexed herewith.

However, it is advisable to have the following points

attended during execution :

1. Record of drawings to be kept at work site.
2. The safety provisions at the work site.
3. Field Quality testing arrangements.
4. Program of completion of work – Bar Chart.
5. Record of Quality Testing.
6. Adequate arrangement of storage of construction material.
7. Record of approved samples of materials.
8. Third party quality monitoring of the works.”

5) It would thus be seen that a senior Officer of Public Works Department of the rank of Superintending Engineer upon his personal inspection along with concerned Engineers and Architects has found that the construction is being carried out in a proper manner. The Superintending Engineer has also found that the work is being supervised at various levels by Nagpur Improvement Trust. It has further been found that material used for works is tested in Laboratory and same is as per conditions of contract. Not only this, taking into consideration that the project is an important project for the city of Nagpur, the Nagpur Improvement Trust has appointed a reputed Architect, who, in addition to planning developmental work, is also required to supervise the said work. Certain suggestions are given by the Superintending Engineer in the concluding paragraph of his report, which are reproduced hereinabove.

6) To a specific query as to whether petitioner in P.I.L. No. 67/2017 is either Architect or Engineer, Shri Khan, learned Counsel fairly states that petitioner is neither an Architect nor Engineer, but a public spirited citizen. Shri Kunte, learned Counsel appearing for Nagpur Improvement Trust, has raised objection as regards bonafides of the said petitioner. It is submitted that the petitioner to whom Shri Khan represents has personal interest in the

litigation inasmuch as he is allotted two shops. We do not propose to go into the objections raised by Shri Kunte.

7) Insofar as petitioner being represented by Dr. Jamal is concerned, Dr. Jamal fairly states that though petitioner is not an Architect or Engineer, but he has taken Expert's opinion and rejoinder filed by the petitioner is on the basis of opinion of expert Architect. However, to a specific query, Dr. Jamal fairly states that he has not placed on record copy of report of the said private Architect consulted by petitioner. To another query whether petitioner has at least named the said Architect, who has been consulted, Dr. Jamal again fairly states that he has not named the said Architect in the rejoinder.

8) By now it is a settled law that this Court should refrain from entering into the matter, which is exclusively within the domain of the Experts. Taking into consideration that the matter needs to be looked into by an independent person having expertise in the field of Engineering, this Court had directed Superintending Engineer of Public Works Department, who is not concerned with the works in question, to personally submit the report. The Expert appointed by this Court has given a report stating therein that the works are being carried out in a proper manner. He has further opined that works are being supervised properly by Nagpur Improvement Trust at different levels and also by a private Architect.

9) We may further add that Administrator on Tajbag is a senior retired Judicial Official of the rank of Principal District Judge. To a specific query to the learned Administrator Shri Kubade, who is personally present in the Court as to whether he is satisfied with the works being carried out and whether the works are being supervised properly, he states that works are being carried out satisfactorily. He, however, states that works are being supervised by one Junior Engineer of Nagpur Improvement Trust and not regularly supervised by the superior Officers.

10) We find that when an independent Expert appointed by this Court

has found nothing wrong in the works and when Administrator, who is a retired Principal District Judge also finds that works are being carried out satisfactorily except that the works are not being supervised regularly by senior Engineers of Nagpur Improvement Trust, we should go along with the opinion of the Expert, rather than opinion expressed by petitioners in the rejoinders, who are admittedly not experts in the field of either Engineering or Architecture.

11) In that view of the matter, we are not inclined to interfere in the public interest litigations. However, while disposing of the petitions, we direct that the suggestions given by the Superintending Engineer, Public Works Department, Nagpur in his report, which are reproduced hereinabove, shall be scrupulously followed by the Nagpur Improvement Trust.

It is further directed that Nagpur Improvement Trust will appoint a Junior Engineer (Project), who shall exclusively supervise and monitor the said project regularly.

We further direct that the Assistant Engineer (Project), Nagpur Improvement Trust shall supervise the said works at least twice in a week. We further direct that Executive Engineer (Project) of Nagpur Improvement Trust shall supervise the said works at least once in a week.

We also direct that Superintending Engineer (Project) of Nagpur Improvement Trust shall personally monitor and supervise the said works at least once in a fortnight.

12) The petitions stand disposed of with aforesaid directions.

JUDGE

JUDGE

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