

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

WRIT PETITION NO. 875/2017.

Magaswargiya Sarvodaya Shikshan and Prashikshan Sanstha, Wardha and another.

-VERSUS-

The State of Maharashtra and others.

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

Court's or Judge's Orders

Shri C.S. Kaptan, Senior Advocate with Shri A.A. Naik,
Advocate for Petitioners.

Shri S.Y. Deopujari, G.P. for Respondent No.1.

Shri M.V. Samarth, Advocate for Respondent No.2.

Ms. P. Chandurkar, Advocate for Respondent No.4.

CORAM : R.K. DESHPANDE &
VINAY JOSHI, JJ.

DATE : FEBRUARY 05, 2019.

Heard.

2. The only question involved in the present writ petition is – Whether petitioners are entitled to protection under the provisions of the Maharashtra Gunthewari Developments (Regulation, Upgradation and Control) Act, 2001 (hereinafter referred to as “the Gunthewari Act” for short).

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3. Section 3 of the Gunthewari Act deals with regularization of Gunthewari Developments and sub-section [1] therein provides for - all Gunthewari developments existing as on 1st January, 2001, shall, on an application being made in this behalf by the plot-holder, to the Planning Authority, as provided in section 4 be eligible for being considered by the Planning Authority for regularization.

4. The definition of 'Gunthewari Developments' as provided in Section 2[1][a] of the Gunthewari Act defines it to mean plots formed by unauthorizedly sub-dividing privately owned land, with buildings, if any, on such plots, including excess vacant land under the Urban Land (Ceiling and Regulation) Act, 1976, not vested in the State Government but excluding land under encroachment.

5. Sub-section [2] of Section 3 states that the regularization of any Gunthewari development shall be subject to the general conditions specified therein, which includes condition [a], that in the layout, ten percent of the plots shall vest in the Planning Authority, free of cost, provided that such plots are

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unsold and unbuilt.

6. In response to the judgment dated 08.07.2016, delivered by this Court in Writ Petition No. 5462/2014, filed by petitioners, the representation made by petitioners was considered by the Chairman of Nagpur Improvement Trust, Nagpur, the competent Authority under the Gunthewari Act. A well reasoned order is passed recording the findings as under :

“(1) The construction development was not carried out on the said plot before qualifying date i.e. 01.01.2001 as indicated in Google image.

(2) On examining the evidence in respect of an application submitted by the applicant to the Nagpur Improvement Trust on 23.07.2006, the said evidences are found false.

(3) The applicant has submitted an application on 15.02.2011, i.e. after the date 30.11.2007.

(4) The area of the said plot falls in Open Space in the sanctioned layout. Similarly, as per the order passed by the Hon'ble High Court in Public Interest Litigation No.40/2013, the plots in the open space cannot be regularized.”

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It is held that in view of the aforesaid findings, the application filed by petitioners is liable to be rejected.

7. Before us, the learned Senior Counsel, has relied upon the permission for opening of the school granted on 12.07.1999, and similar such documents, said to have been issued by the Education Department upto 28.10.2005, to urge that the plot No. 60-A, in respect of which claim is made, has been in possession of petitioners and the school is being run on the building constructed thereon. We do not find from these documents that the same pertain to plot in question i.e. plot no.60-A.

8. Reliance is also placed on un-registered gift deed dated 09.08.1999, sought to have been executed in favour of petitioners, which document was impounded on 10.02.2011, to urge that the land in question was transferred prior to 01.01.2001.

9. We cannot recognize the transfer by way of un-registered document of the plot in question on 09.08.1999. We also called upon the learned Senior Counsel to point out to us any water bills or electricity bills to establish the possession and user of the

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building for school purpose. We also granted time to produce it by granting an adjournment. Learned Senior Counsel is unable to place on record any such document.

10. In view of above, we find that the land in question is not covered by the gunthewari development. Petitioners could not satisfy us on the question of their ownership and construction prior to 01.01.2001. No application for regularization was filed. It is the case of respondents that encroachment over the land made on 01.11.2011 was removed. The findings of fact recorded by the Chairman, Nagpur Improvement Trust is the report dated 11.01.2017, needs no interference. Writ Petition is therefore, dismissed. No costs.

JUDGE**JUDGE**

Rgd.