

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

WRIT PETITION NO. 2125/2017

Chintaman Narayan Hedao and others,
..VS..
Jayvantibai Goma Mohadikar and others.

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

Court's or Judge's orders

Mr. S.D. Khati, Advocate for the petitioners.
Mr. R.T. Anthony, Advocate for the respondent Nos. 1 and 2.
Mr. R.R. Shrivastav, Advocate for the respondent No.3.

CORAM : Z.A.HAQ, J.

DATED : 11th September, 2019

Heard.

By the impugned order, the executing Court has rejected the applications (Exh.18, 23 and 30) filed by the judgment debtors objecting to the execution proceedings. While rejecting the applications (Exh.18, 23 and 30), the executing Court has referred the order passed by the learned District Judge in Regular Civil Appeal No.170/2005 on 09th July 2010 by which learned District Judge had directed that the alleged unauthorized construction of the judgment debtors shall be demolished subject to the decision of Appeal No.GA-149/A-286/2001, which was then pending before the Municipal Commissioner, Nagpur.

The learned advocates appearing for the respective parties submitted that the proceedings which were pending before the Municipal Commissioner, Nagpur came to be decided and now appeal under Section 47 of the Maharashtra Regional Town Planning Act 1966, is pending before the State Government.

After hearing the learned advocates for the respective parties and going through the documents placed on record of this petition, I find that the impugned order is just and proper and it cannot be said that the executing Court has committed any illegality or error of jurisdiction by rejecting the applications (Exh.18, 23 and 30). Hence, I see no reason to interfere with the impugned order. Only clarification which is required to be made is that the demolition of the unauthorised construction shall be subject to order that would be passed by the State Government in appeal.

With the above clarification, the writ petition is **disposed**. In the circumstances, the parties to bear their own costs.

However, in the facts of the case, it is directed that interim order granted by this Court on 07th April 2017 shall continue for two months after the communication of the order passed by the State Government pending before it.

The State Government is directed to decide the appeal filed by the petitioner under Section 47 of the Maharashtra Regional Town Planing Act 1966 till 15th February 2020.

The contention of the petitioner relying on Section 52(A) of the Maharashtra Regional Town Planing Act 1966 is not adverted to and is kept open for consideration by appropriate forum in appropriate proceedings.

JUDGE