

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

Writ Petition No.2580 of 2018

Mahakalkar Layout Plot Dharak Sangharsha Samiti & another
vs.
The State of Maharashtra & others

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

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Court's or Judge's Orders

*Shri R.L. Khapre, Advocate with Shri A.Z. Zibhkate, Advocate for
the Petitioners.*
Shri D.P. Thakre, Additional G.P. for Respondent Nos.1, 4 & 5.
Shri S.M. Puranik, Advocate for Respondent No.2.
Shri A.M. Quazi, Advocate for Respondent No.3.

CORAM: SUNIL B. SHUKRE & S.M. MODAK, JJ.
DATE : 4th JULY, 2019.

Heard.

Petitioner No.1 is a Samiti formed to take up the cause of members of a Co-operative Housing Society affected by a drive undertaken to demolish unauthorized constructions made on public lands by encroaching upon them and petitioner No.2 is also one of the affected persons.

Members of the petitioner No.1 – Samiti have constructed their houses on a public land which has been acquired long ago by the State for public purpose and the present public purpose is of construction of building of a Sports Complex in terms of the Notification dated 27th January 2016, following which a public notice came to be issued on 24/08/2017 cautioning the members of the public against dealing with the public land, in any manner and encroaching

upon them, one of which is the subject matter of this Petition, in any manner or making any encroachment upon it. The Petitioners have, therefore, sought quashing of the Government Notification dated 21/01/2016 and public notice dated 24/8/2017 and also further such relief as declaring the approval granted by the State of Maharashtra to the 30 years' lease granted by the Nagpur Municipal Corporation to the Sports Authority of India, as illegal. The petitioners have also sought interim protection.

With such background and such reliefs claimed, what becomes important is to know the existence of any right in favour of the petitioners and so we have carefully considered the documents placed on record in the light of the arguments canvassed on behalf of both sides to ascertain the position.

We find that the right which the members of the petitioner - Samiti are seeking to assert in this petition itself does not arise for the reason that the land on which the houses have been constructed by the members of the petitioner - Samiti is not a layout land as per the sanction given by any competent authority. There is one non-agricultural conversion permission granted by the Tahsildar on 28th April, 2003. A copy of this permission is filed on record by the petitioners. On going through this document, it becomes clear that the non-agricultural conversion has been granted by the Tahsildar, not for any residential purpose, but only for the industrial use. Based upon such conversion, a housing society came to be formed,

which prepared the layout and without getting it properly sanctioned, the Samiti transferred the plots shown in the layout to the members of the petitioner-Samiti and then the houses were constructed thereon by these members. Such construction is fundamentally flawed, the non-agricultural conversion being for industrial use and, therefore, the members of the Samiti do not have any legal right in them to seek the reliefs, which they have prayed for in the present petition.

It appears that Chandrabhaga Housing Society, of which members of this Samiti are also the members, is independently pursuing a civil suit before the Civil Court. In that suit, some time ago, an injunction against the authorities prohibiting them from taking any action of eviction/demolition of the houses was sought during pendency of the suit and the same was refused and, that order, we are informed, still holds good.

The learned Counsel for the petitioners has invited our attention to the new policy framed by the State of Maharashtra vide Government Resolution dated 8th March, 2019. This Government Resolution has been issued with a view to provide houses to those unfortunate lots of the society, who are not having a single house though having some temporary shelter made by encroaching upon lands. The policy says that all those encroachments made on or before 01/01/2011 would be eligible for considering their regularization. It appears to us that in such a case,

proper remedy for the petitioners would lie in demonstrating before the Government their entitlement to get benefit of the said policy. However, the petitioner No.1 - Samiti has not made any representation to the Government so far.

Be that as it may, the discussion that we have made so far would show that the members of the petitioner - Samiti do not have any right to seek the reliefs that they have prayed for in this petition and as such, according to us, the petition cannot be entertained.

The petition stands dismissed.

We, however, make it clear that we have not said anything about the right of the members of the petitioner - Samiti to make representation to the Government and demonstrate before the Government their eligibility to avail of the benefit of the Government Resolution dated 8th March, 2019 and, therefore, if any such representation is made to the Government, the liberty of making the same always inheres in the petitioner - Samiti or its members, same shall be decided by the Government as expeditiously as possible in accordance with law. If any such representation is made, same would be decided by the competent authority within three weeks of the receipt of the representation and the competent authority would be at liberty to consider on its own merits the grant of any such relief including interim relief or refusal of it, as it may deem fit.

In view of the final order passed in this petition, all other applications are disposed of accordingly.

Authenticated copy of this order be supplied to the learned Counsel appearing for the parties.

**sandesh*

JUDGE

JUDGE