

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.221 OF 2016

JANARDHAN KAMALAKAR NAWALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for the Petitioner : Shri Shermale K. N.
AGP for Respondents 1 to 4 : Shri N.T.Bhagat
Advocate for Respondents 5 to 9 : Shri A.N.Nagargoje
Advocate for Respondents 10 to 17 : Shri S.V.Deshmukh

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 25th February, 2020

Per Court:

1 On 17.02.2020, after hearing the parties, I had dictated an order in open court and while dismissing the petition, I had imposed certain conditions on the petitioner. However, before signing the order, I noticed that insofar as the claim of the individual respondents to the extent of having paid the purchase amounts to the petitioner by virtue of the registered sale deeds as consideration for purchasing the plots, was concerned, it was necessary to hear the learned advocates. Having noticed this facet of the case, which was not addressed by the parties, I listed this matter today so as to consider their submissions with regard to such sale of plots by the petitioner to the eight respondents.

2 I have heard the learned advocates for the respective sides. The learned advocate appearing on behalf of respondent Nos.10 to 17 submits that he has taken instructions from his respective clients and considering the controversy with regard to the Non Agricultural (N.A.) permission, they are desirous of seeking refund of their amounts paid to the petitioner along with 10% interest for the past 11 years. It is in this backdrop that I have permitted the litigating parties to address the Court.

3 I have perused the order dated 22.01.2020 passed on Civil Application No.836/2020 in WP No.221/2016, which reads as under :-

“1. This application is taken out by respondents No. 10 to 17 in Writ Petition No. 221 of 2016, who apprehend that petitioner Janardhan Kamalakar Nawale may withdraw the writ petition and therefore, they seek their transposition as petitioners in the writ petition.

2. The applicants have purchased the property from the petitioners.

3. The learned Counsel for respondents No.5 to 9 in W.P. 221/2016 (respondents No. 2 to 6 in C.A. No. 836/2020) is right in the submission that the applicants did not challenge the order of the Commissioner before the State Government, which they could have done. However, if this petition is dismissed in default or if the petition is withdrawn, the applicants shall be seriously prejudiced.

4. In this view of the matter, while I am not inclined to consider the application for the transposition at this stage, it is made clear that Writ Petition No. 221 of 2016 shall be decided on merits. The writ petition shall not be dismissed in default nor shall the petitioner be permitted to withdraw the petition.

5. The application is disposed of.

6. List Writ Petition No. 221 of 2016 on the Admission Board in Urgent Category on 29th January 2020.”

4 This Court had recorded that it is not inclined to accept CA No.836/2020 for transposition moved by respondent Nos.10 to 17 and this Court would decide this petition on it's merits.

5 I have heard the learned advocate for the petitioner, the learned AGP on behalf of respondent Nos.1 to 4, the learned Advocates appearing on behalf of respondent Nos.5 to 9 and 10 to 17. With their assistance, I have considered the first order passed by the District Collector dated 04.07.2009, thereby granting NA permission to the land which finds mention as Survey No.1/(5B/B/2/1) 84 admeasuring 2150 Sq.Mtrs. At Sr.No.13 of the conditions imposed on the petitioner, it was made clear that any sale prior to the development of the property would not be permissible and would amount to violation of NA permission. At Sr.No.20, it was mentioned that the NA permission would be cancelled if any information is found to be false.

6 Respondent Nos.5 to 9 approached the Additional Commissioner, Nashik by preferring RTS Appeal No.324/2009 and by order dated 25/05/2011, the said appeal was allowed and the NA permission was cancelled. The grounds of cancelling the NA permission were that an imposter was produced by the petitioner to demonstrate that she was Smt.Pramila Aaglave. Smt.Aaglave was 55 years of age at the relevant time and the lady produced as being Smt.Aaglave was 27 years old and her consent for NA was recorded as being the consent on behalf of

Smt.Aaglave. Another ground that was noted for cancelling the NA permission was that the petitioner had put forth different boundaries of another land for seeking NA permission, which belongs to respondent Nos.5 to 9.

7 The above order was assailed by the petitioner before the Hon'ble Minister and by the impugned order dated 19/11/2015, the appeal was dismissed.

8 The learned Advocate for respondent Nos. 10 to 17 specifically contends that they were whole-heartedly supporting the petitioner. However, since 19/11/2015 till today, these respondents have not filed any petition for challenging the orders of the Additional Commissioner as well as the Hon'ble Minister as they felt that, by their good relations with the petitioner, they would get appropriate orders in this petition filed by him.

9 This Court, while exercising its supervisory jurisdiction, will have to assess as to whether there was any material available for the competent authority to pass the impugned orders. Since the material indicating that the petitioner had shown wrong boundaries and had allegedly produced an imposter for obtaining consent of Smt.Aaglave, I find that the grounds were sufficient to set aside the granting of NA permission.

10 It is immaterial for this case as to whether respondent Nos.10

to 17 are supporting the petitioner or not. They have not raised any grievance before this Court through their petition. Having not raised any challenge, they would have to accept the fate of this petition.

11 The learned Advocate for the petitioner submits that even if this petition is not entertained and this Court is not inclined to cause any interference in the impugned orders, he being a party to RCS No.395/2010 as a defendant, since the suit has been filed by respondent Nos. 5 to 9, he would contest the civil litigation. The said suit is dismissed by judgment dated 03/11/2018 and a Reg.Civil Appeal is pending. He, therefore, submits that if he succeeds in civil litigation, he would be the owner of a particular land and he would then put that land before the Collector for seeking fresh NA permission.

12 In view of the above, this petition is dismissed for being devoid of merit. If, at the end of the civil litigation referred to in the foregoing paragraph, the present petitioner is held to be the title holder of a particular property which is identified in the civil litigation and if he desires to put up that property for NA permission, the Collector would consider the said application on its own merits as an independent application for NA permission.

13 Considering the registered sale deeds of respondent Nos.16, 17, 10, 14, 13, 12 and 15, which are on record from page numbers 66 to 103 and considering the claim of respondent No.11 (Bhagwat Soma

Lende), and the request of these respondents, the petitioner would return their amounts paid to him, as are mentioned in the registered sale deeds along with the quantified interest amount of Rs.50,000/- (Rupees Fifty Thousand) over and above the individual amounts paid. These respondents are agreeable.

14 The learned advocate for the petitioner prays for six months time. Therefore, the above stated consideration amounts along with the quantified interest of Rs.50,000/- for the past 11 years per person, shall be deposited by the petitioner in this Court on or before 30.06.2020, failing which, these respondents are at liberty to approach the District Collector, Ahmednagar, who shall initiate the proceedings against the immovable and movable properties of the petitioner for recovery of such amounts as arrears of land revenue.

15 Until the petitioner deposits the amounts as directed above, the Revenue Authorities would not consider any further proposal of the petitioner for sanction of N.A. permission.

16 Insofar as respondent No.11 (Bhagwat Soma Lende) is concerned, by applying the same analogy, if he has also entered into a registered sale deed with the petitioner, the consideration amount along with Rs.50,000/- as quantified interest, shall be deposited by the petitioner within the same time frame. If the amount invested by Mr.Lende is less than Rs.1 lakh, the interest component would be 50% of

the total amount that he has paid to the petitioner.

17 After these respondents receive their amounts as directed above, by withdrawing them from this Court, the registered sale deeds in their names shall stand automatically cancelled and the petitioner would be relieved from the said transactions.

kps

(RAVINDRA V. GHUGE, J.)