

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

Writ Petition No.7410 of 2019

**Milind Gandhi Vs. The City of Nagpur Corporation through its Municipal
Chairman, Nagpur and another**

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

Court's or Judge's orders

Mr. V.K. Paliwal, Advocate for the petitioner
Mr. R.R. Chhabra, Advocate for the respondent No.1.
Mr. P.S. Khubalkar, Advocate for the respondent No.2.

CORAM : MANISH PITALE, J.

DATED : JANUARY 21, 2020

By this writ petition, the petitioner (original plaintiff) has challenged order dated 10/10/2019, passed by the Court of Civil Judge (Junior Division), Nagpur (Trial Court), whereby an application (Exh.52), filed on behalf of the petitioner raising objection to a report of the Court Commissioner and for reappointment of Commissioner has been rejected.

2. The petitioner has filed a suit for declaration and permanent injunction against the Nagpur Municipal Corporation, as also the respondent No.2 herein, seeking a declaration that the Municipal Corporation is not entitled to demolish part of the house property of the petitioner. In this suit, an application for temporary injunction was filed by the petitioner, which was dismissed by the Trial Court. Aggrieved by the same, the petitioner filed an appeal before

the Court of District Judge, Nagpur (Appellate Court), wherein by order dated 29/08/2018, the Appellate Court set aside the order of the Trial Court and remanded the matter back for fresh consideration. The Appellate Court specifically directed the parties to file a joint application before the Trial Court for inspection and measurement of the suit premises of the petitioner by a Court Commissioner. Liberty was granted to the parties to produce documents before the Court Commissioner.

3. In pursuance of the said directions, a joint application was filed before the Trial Court and by order dated 14/11/2018, the City Survey Officer was appointed as Court Commissioner. He was directed to visit the suit property and after issuing notice to rival parties, to carry out measurement and inspection of the suit property.

4. Pursuant to the said order passed by the Trial Court, the Court Commissioner so appointed carried out the exercise on 16/02/2019 and a report was prepared by the Court Commissioner, which was placed on record of the Trial Court.

5. The petitioner filed the aforesaid application at Exh.52, raising objection to the said report and seeking reappointment of the Court Commissioner. The ground raised on behalf of the petitioner was that the Court Commissioner had not carried out the directions given by the Trial Court in the right spirit and that actual

measurement was never carried out. The Trial Court took into consideration the objection and after referring to the report prepared by the Court Commissioner, found that none of the grounds raised by the petitioner were made out and accordingly, the application was rejected.

6. While issuing notice in this writ petition on 08/11/2019, this Court recorded specific submission raised on behalf of the petitioner that the exercise expected of the Court Commissioner was not carried out in terms of the order passed by the Trial Court and that the objections raised by the petitioner were not considered in the proper perspective by the Trial Court. The learned counsel appearing for the petitioner reiterated the said contention raised on behalf of the petitioner.

7. The learned counsel appearing for the respondents disputed the contentions raised on behalf of the petitioner and invited attention of this Court to the report of the Court Commissioner. It was pointed out that the measurement was indeed carried out by the Court Commissioner in presence of the petitioner and his counsel and no objections were at all raised by the petitioner and his counsel when such measurement was carried out.

8. The thrust of the contention raised on behalf of the petitioner before this Court is that a perusal of the report of the Court Commissioner would show that there is nothing to indicate that actual measurement was carried out, which

was expected in terms of order passed by the Trial Court while appointing the Court Commissioner. In order to consider the said contention raised on behalf of the petitioner, this Court has perused the report of the Court Commissioner on record. It shows that actual measurement was indeed carried out, because there are four notes that are specifically recorded in the report of the Court Commissioner, stating about the existence of the area of the property as found from the documents placed before the Court Commissioner and it is indicated about the possession of the petitioner. The manner in which the report has been prepared and the phraseology used shows that measurement was indeed carried out by the Court Commissioner. It is also significant that the report of the Court Commissioner records the fact that at the time of measurement, rival parties and their respective counsel were present. The report does not record any objection raised either by the petitioner or his counsel when report was prepared. In fact, even in the application filed before the Trial Court and in the writ petition filed before this Court, it is not the contention of the petitioner that objection was raised by him or his counsel at the time of measurement and that the Court Commissioner did not record such objection.

9. Hence, this Court finds that the impugned order passed by the Trial Court cannot be said to be erroneous and the objections raised on behalf of the petitioner were indeed considered and discussed in the

impugned order when the application at Exh.52 was dismissed.

10. Considering the nature of the contentions raised on behalf of the petitioner in the suit, it would be in the interest of justice that the proceedings in the suit pending before the Trial Court are expedited, so that the claim of the petitioner is decided finally.

11. In view of the above, the writ petition is dismissed.

12. The Trial Court is directed to dispose of the suit as expeditiously as possible and in any case within a period of one year from today.

JUDGE