

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

WRIT PETITION NO. 1386 OF 2021

PETITIONERS:-

1. Smt. Samsunnissa Wd/o Mohd Ismail Pathan Aged about 75 years, Occ; Housewife,
2. Gulam Gaus S/o Mohd Ismail Pathan Aged about 50 years, Occ. Business,
3. Fatima D/o Mohd Ismail Pathan Aged about 35 years, Occ; Household,
All R/o Plot No.81, Teachers Colony, Gorewada Ring Road, Jaffar Nagar, Nagpur-13.

VERSUS

RESPONDENTS:-

1. Nagpur Municipal Corporation, Through Municipal Commissioner, Civil Lines, Nagpur.
2. Assistant Director, Town Planning Department, Nagpur Municipal Corporation, Nagpur.

Shri S.P. Dharmadhikari, Sr.Advocate a/b Mr. A.D.Sonak,
Counsel for the petitioners.
Shri Girish Kunte, Counsel for the respondents.

**CORAM : SUNIL B.SHUKRE &
AVINASH G. GHAROTE, JJ.**

DATE : 04.05.2021.

ORAL JUDGMENT (Per :Sunil B.Shukre, J.)

1. Heard.
2. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.
3. It is seen from the impugned order that application of the petitioners for regularization of their plot bearing Nos.89 to 94 falling in Khasra No.254/4, Mouza Zingabai Takali, Nagpur located in Progressive Co-operative Housing Society having refused to be regularized under the Maharashtra Gunthewari (Regularization, Upgradation and Control) Act, 2001 by the impugned order dated 01.01.2020. The only ground taken in the impugned order is that the plots in question have been shown as lying within the open space in the approved layout plan and that these plots are not forming part of any approved layout plans. Section 3 of the Maharashtra Gunthewari (Regularization,

Upgradation and Control) Act lists out the grounds on which Gunthewari Development can be disallowed. According to the learned counsel for the respondents, the contingencies envisaged in second proviso (e) to section 3(1) of the said Act are applicable to the case of the petitioners. These contingencies, relate to the circumstances when in the opinion of the Planning Authority, such regularization is not in the public interest or because of the matter being sub-judice or same being barred by some Court's decision or order. These grounds do not form any part of the impugned order dated 01.01.2020. Therefore, even though these grounds have been stated in the reply filed on behalf of the respondents cannot be looked into to support the impugned order, as held in the case of *Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and ors. Reported in (1978) 1 SCC, 405*. Besides, it appears that no opportunity of hearing has been granted to the petitioners which ought to have been granted in such cases.

4. In the circumstances, we find merit in the petition, and it deserves to be allowed.

5. The petition is allowed. The impugned order dated 01.01.2020 is hereby quashed and set aside. The matter is remanded back to the respondents for fresh consideration and decision on the application for regularization of Gunthewari Development in accordance with law, which decision shall be taken within eight weeks from the date of appearance of the petitioners before the respondents.

6. The petitioners are directed to appear before the respondents on **17.05.2021**. It is further directed that the construction already made upon the plots in question stands protected till decision to be taken afresh by the respondents and also for a further period of two weeks from the date on which final decision is taken and communicated to the petitioners by the respondents.

7. Rule is made absolute accordingly. No costs.

JUDGE

JUDGE