

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

CRIMINAL WRIT PETITION NO. 295 OF 2020

M/s. Nirman Superstructures vrs State of Maharashtra and ors

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri R.P.Malviya, Advocate for petitioner
Ms. S. Z.Haideri, APP for Respondent No.1.
Shri Y.Y.Salve, Advocate for Respondent No. 2
Shri R.R.Deo, Advocate h/f Shri A.A.Naik, Advocate for Respondent No.3

CORAM :- MANISH PITALE, J.

DATED :- 02.08.2021

On the last occasion, learned APP had sought short adjournment to place on record affidavit on behalf of State, in the backdrop of the statement made on behalf of the petitioner and respondent Nos. 2 & 3 that the dispute between respondent Nos. 2 and 3 stands settled amicably and that nothing remains in the present petition.

Although the reply-affidavit is yet to be placed on record, as the concerned Officer is not presently available, the learned APP submits that the statements of the parties have been recorded, in the backdrop of the settlement between respondent Nos. 2 and 3.

The learned counsel appearing for respondent Nos. 2 and 3 invited attention of this Court to Memorandum of Understanding dated 18.07.2020, executed between respondent No. 2 along with others on one hand and respondent No. 3 on the other, thereby showing that *inter se* dispute between them has been settled. Affidavits in support of the said Memorandum of Understanding filed in a Anticipatory Bail Application are also placed on record in this

petition.

A perusal of the said documents showed that since the dispute between respondent Nos. 2 and 3 has been settled, now there would be no impediment for the petitioner proceeding to demolish the existing old structure on the property in question. As a consequence, the apprehension regarding cognizable offence being committed in the backdrop of the dispute between respondent No. 2 & 3 and the petitioner does not arise. The very pre-condition for exercise of power under Section 149 of Code of Criminal Procedure is taken away and therefore, the impugned order dated 07.07.2020 deserves to be set aside.

The question of law sought to be raised in this petition can be decided in an appropriate proceeding.

In view of the above, the present petition is allowed. The impugned order dated 07.07.2020 is quashed and set aside.

JUDGE

Rvjalit