

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

**CRIMINAL APPLICATION (APL) NO. 799 OF 2019**

Dhammachakra Buddhavihar Sewa Trust,  
Mhada Colony Premises,  
Through its Secretary  
Manohar Gulabrao Manwatkar  
Aged about 81 years, occ - Retired  
R/o. Mhada Colony, Sindi (Meghe)  
Tahsil and District Wardha

.... **Applicant**

- **Versus** -

Nagpur Housing Development and  
Area Development Corporation, Nagpur  
Through its Executive Engineer,  
Nagpur Division No. 2, Nagpur.

.... **Non-applicant**

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Mr S. D. Malke, Advocate for the applicant  
Mr H. N. Verma, Advocate for the non-applicant  
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**CORAM : ROHIT B. DEO, J.  
DATED : 20<sup>TH</sup> JANUARY, 2021.**

**ORAL JUDGMENT**

Heard.

2. With consent of parties, the application is finally heard at the admission stage.

3. The genesis of the application is an order dated

18-10-2016 rendered by the Sub Divisional Magistrate (SDM), Wardha in proceedings initiated under Section 145 of the Code of Criminal Procedure (Code).

4. The property in question is Plot 46 which is a portion of Survey 69-70/1/2 admeasuring approximately 2013.428 sq.m. Irrefutably, the non-applicant is the owner of the said property.

5. Indeed, perusal of the averments in the application would reveal that, even according to the applicant, it is non-applicant – Nagpur Housing Area Development Board, who the owner. The applicant claims to be in possession of the said property. Perusal of the contentions in the reply filed before the SDM, which contentions are culled out in the order of SDM, would suggest that according to the applicant – society, the Government land is used to hold public functions and a Panchsheel flag is installed. In view of the admitted factual scenario, the learned SDM held that although the possession of the applicant is unauthorized, the possession could be recovered only in accordance with law.

6. Surprisingly and for reasons inexplicable, the order of SDM which is in fact in favour of the applicant-society came to be challenged in Criminal Revision A. 92/2016 before the Additional Sessions Judge, Wardha which is dismissed vide judgment dated 19-6-2019.

7. This application is preferred invoking the inherent powers under Section 482 of the Code.

8. This Court asked Mr. Malke to address the Court on the propriety of challenging the order of SDM, which protects the possession of the applicant and categorically articulates that the possession can be recovered only in accordance with law. In response, Mr. Malke submits that the SDM could not have granted the declaration that the applicant is in unauthorized possession.

9. In my considered view, this application is as gross an abuse of process of law, as any.

10. The learned SDM has not granted a declaration as such. As a fact, even according to the applicant-society, the land is owned by

either the Government or the non-applicant – board and, therefore, it is an admitted factual scenario that the applicant is in unauthorized possession. That apart, it would always be open for the applicant to take an appropriate defence in the proceedings which may be instituted for recovery of possession and it is well settled that the findings recorded, much less an observation made, in 145 Code proceedings shall be subservient to the decision in the proceedings initiated for recovery of possession.

11. Precious judicial time is wasted of both the Courts i.e. the revisional court and this Court. Order which is clearly in favour of the applicant is unnecessarily challenged first before the Sessions Court and then this Court.

12. In my considered view, it would be necessary to impose exemplary costs, lest the tendency and propensity to flood the Courts with frivolous or unnecessary litigations causes incalculable harm to genuine and merited causes. The application is dismissed with costs of Rs. 25,000/- (Rupees Twenty Five Thousand). The costs shall be deposited within four weeks. If the costs are not deposited within

four weeks, the Registrar(Judicial) shall forward copy of this judgment to the Collector, Wardha with a request that the costs be recovered as arrears of land revenue. If such an occasion arises, the Collector, Wardha shall effect the recovery within 15 days of the receipt of communication from the Registrar(Judicial) and submit the compliance report.

**JUDGE**

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