

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
WRIT PETITION NO. 958/2022

(RAJKUMAR D. DAHATE **VERSUS** THE NAGPUR IMPROVEMENT TRUST, NAGPUR & OTHERS)

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

Court's or Judge's order

Shri Raju Kadu, counsel for the petitioner.
 Shri S.M. Puranik, counsel for the respondents.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

DATE : JUNE 20, 2022.

The petitioner who claims to be a resident of Nagpur Nagar Vikas Gruh Nirman Society, Nagpur has filed this writ petition praying that the respondents be restrained from constructing a water tank at Mouza Chikhali, Khasra No.28/2 and 3. It is also prayed that the water tank be constructed at an alternate place.

The principal grievance of the petitioner is that the No Objection Certificate dated 22.08.2019 is shown to be signed by the President of the said society who had expired much prior to the date on which it is shown to have been signed. As a result of the construction of the water tank there would be no place available for the children in the locality who are presently utilizing that portion of Khasra No.28/2 and 3 as playground.

On 29.04.2022 this Court after noticing the affidavits filed by the respondents passed the following order:

“2. *The case of the Petitioner is that the area which is earmarked as playground is being used by the Respondent-Municipal Corporation for construction of the water tank.*

3. *That being the specific assertion of the Petitioner, the Respondent-Municipal Corporation was directed to place on record the position of the concerned area in the Development Plan as to whether it is so earmarked as playground.*

4. *The learned counsel for the Respondent-Municipal Corporation states that the area is not a playground but only an open ground which is stated to be used by some people for playing. The learned counsel submits that there is a dire need of a water tank in the area and the construction actually is in public interest which would be for the benefit of the residents of the area.*

5. *As regards the designation of the area in the Development Plan, the Respondent-Municipal Corporation has filed an additional affidavit on 26 April 2022. It is stated that in the Part Development Plan the concerned area was marked as Compost Depot. This was the position of the area when the Development Plan was sanctioned in 2001 by the State Government. Subsequently on 25 January 2016 the State Government had issued a notification by which it has de-reserved an area of 72.1584 Hectares that was reserved for Compost Depot and converted it into residential category. It is stated that the open plot is in the layout, which is an unauthorised one and has not yet been regularised by NIT, where the double decker Elevated Storage Reservoirs are being constructed. It is also stated that in the layout plan of Kh No 28/2-3 for Mouza: Chikhli Khurd the open space is marked as Public Utility/Garden. The layout is an unauthorised layout which has not yet been regularised and it cannot be said that the said open space has been designated as garden by the competent authority. The Corporation has also stated that the State Government has introduced Unified Development Control Regulations (UDCR) for entire Maharashtra except Mumbai and some other places in the year 2020. As per Regulation 3.4.7 Structures permitted in Open Space in clause (ii) it is specifically stated that utilities such as water tank (underground or elevated) can be constructed on open space. The construction of a water tank which is a public amenity for the betterment of the area.”*

Today, attention is invited by the learned counsel appearing for the respondents to paragraph 5 of the affidavit filed by the Executive Engineer (Public Health Engineering) of the Nagpur Municipal Corporation. In paragraph 5 it has been stated as under:

“5. It is submitted that the said open plot is being used by the nearby residents for walking and playing games by the children but the same is not a designated garden. The respondent authorities have erected some playing instruments on one side of the said open space for the use by local children. It is submitted that existing ground size is 28.5 Meters X 54 Meters = 1539 Sq. Mtrs. Out of this NMC will be utilizing an area of 26 Meters X 27.5 Meters = 715 Sq. Meters for the construction of double decker ESR. The rest of the land can be used by the citizens of the said locality.”

From the aforesaid, it is clear that the entire area would not be occupied by the proposed water tank and instead some space would be left for being used by the citizens of the locality.

In view of what has been stated aforesaid, we do not find that there is any scope for granting relief to the petitioner. Erection of the water tank is in the larger interests of the residents of the locality. If the petitioner is aggrieved by the issuance of the No Objection Certificate by the Society, he is free to challenge the same in accordance with law. The writ petition is thus dismissed with no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(A. S. CHANDURKAR, J.)

APTE