

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

WRIT PETITION NO.2439/2019

Mangesh s/o Bhaskar Manekar, Nagpur. .. Petitioner.

Versus

State of Maharashtra, through Secretary,
Ministry of Urban Development,
Mantralaya, Mumbai, and two others. .. Respondents.

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Shri D.L.Dharmadhikari, Advocate for petitioner.
Ms. N. P Mehta, Assistant Government Pleader for respondents.

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CORAM :- A.S.CHANDURKAR AND SMT. M.S.JAWALKAR, JJ.
DATE :- MARCH 08, 2022.

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The petitioner is the joint owner of the agriculture land bearing Survey No.39 admeasuring 2 Hectares 23 Ares situated at Mouza Shankarpur, Tahsil and District Nagpur. It is the case of the petitioner that he alongwith other co-sharers had sold the agriculture land on 21.08.2006 to Ashtavinayak Developers by registered sale deed. Thereafter on 19.04.2014 the said Ashtavinayak Developers had sold the land to one Shri Omprakash Bajaj. Subsequently on enquiries being made by the owner of the property, it was noticed that Mutation Entry No.916 dated 08.02.2010 had been taken and as per that entry Talegaon-Dabhade Scheme had been sanctioned on the agriculture land as per provisions of Section 20(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short, 'the Act of 1976').

2. The owners of the land made enquiries with the petitioner in that regard. The petitioner obtained certified copies of the documents under the Right to Information Act, 2005 as according to him the land sold was agricultural land not subjected to the provisions of the Act of 1976. In the aforesaid backdrop the petitioner has sought a declaration that the proceedings under the Act of 1976 be declared *void ab initio*.

3. After notice was issued in the writ petition the parties filed their affidavits as well as re-joinders. In the additional affidavit filed by the Collector, it has been stated that the records were inspected and it was thereafter revealed that the user of the land was for agriculture. In paragraph 5 of the affidavit dated 28.02.2022 it has been stated as under :

“5. Thus taking note of the reports and the factual material on record, it is clear that, the land in question happens to be away from the periphery of Shankarpur Gaothan by more than 200 meters, though it falls in Nagpur Urban Agglomeration area and as per the Development Plan as existing from 15.07.2000 as per Notification dated 06.05.2000 the user of the land was shown for agricultural use and therefore in that context the land in question would not have been encompassed under the Urban Land Ceiling Act, 1976.”

In view of this categorical stand taken by the respondent no.2, it is clear that the provisions of the Act of 1976 could not have been applied to the land in question. Accepting a statement made in paragraph 5 of the aforesaid affidavit, prayer no.(1) in the writ petition deserves to be granted. Once that prayer is granted the consequential orders dated 31.03.2006 and 28.07.2006 passed by the Additional Collector in proceedings under the Act of 1976 would not survive. The same would also be rendered *void ab initio*.

4. We further find that in paragraph 7 of the affidavit filed by the respondent no.2, it has been stated as under:

“7. As to how, the photocopied questioned communication dated 20.04.2006-2007 bearing Outward No.3725 of the Office of Assistant Director, Town Planning, Nagpur, entered in the Urban Land Ceiling Case is a matter of enquiry as well as the reference thereto in the order in the Urban Land Ceiling Case. The answering respondent has initiated enquiry into the matter”.

It has been stated that an enquiry has been initiated into the matter. It is expected that such enquiry would be taken to its logical end.

5. In view of aforesaid and in the light of the affidavit filed by the respondent no.2, the writ petition is allowed in terms of prayer clause (1) and also by setting aside the orders dated 31.03.2006 and 28.07.2006 passed under the provisions of the Act of 1976. The respondents shall take consequential steps pursuant to aforesaid order as regards mutation entries. The petitioner is entitled to costs of the writ petition from the respondents.

6. With these directions, the writ petition stands disposed of. No costs.

7. To ensure that the enquiry initiated as referred to in paragraph 7 of the affidavit of the respondent no.2 is taken to its logical end and for reporting compliance of the same by filing affidavit, put up on **28.04.2022** for that purpose.

(SMT. M.S.JAWALKAR, J.)

(A.S.CHANDURKAR, J.)

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