

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

WRIT PETITION (WP) NO. 3057/2020

1. Shri Bhushan s/o Nathuramji Zade,
Aged about 48 years, Occupation : Business,
R/o 105, Raje Raghuji Nagar,
Nagpur – 440024
 2. Shri Ramakant s/o Nathuramji Zade,
Aged about : 58 years, Occupation : Business,
R/o Plot no. 4, Rashmi Pryog Apartment,
tatyatope nagar,
WHC Road Nagpur. 10
- PETITIONER(S)

// VERSUS //

1. State of Maharashtra,
Through Ministry of Urban Development,
Through its Secretary,
Mantrayala, Mumbai – 400 032
 2. Nagpur Improvement Trust,
Nagpur through it's Chairman,
Having it's Office at Sadar, Nagpur.
 3. Nagpur Municipal Corporation,
Nagpur through it's
Municipal Commissioner,
Civil Line, Nagpur.
- RESPONDENT(S)

Shri M. Anilkumar, Advocate for the petitioners
Smt. Shamasi Haider h/f. Miss. Nivedita P. Mehta, AGP for respondent
no. 1
Shir S.M. Puranik, Advocate for respondent no. 2
Shri Girish A. Kunte, Advocate for respondent no. 3

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

DATED : 08/06/2022

ORAL JUDGMENT : (PER:- A. S. CHANDURKAR, J.)

Rule. Rule made returnable forthwith.

2. The challenge raised in this writ petition is to the order dated 22.04.2020 as communicated to the petitioners vide communication dated 23.04.2020 issued by the respondent no. 3 to the petitioner no. 2 informing him that his request for regularization of Plot Nos. 42, 43, 48 and 49 cannot be accepted since they fall in the open space. It is the case of the petitioners that on 30.07.2002 they had made an application for regularization of the aforesaid plots prior to coming into force of the Maharashtra Gunthewari Developments (Regularisation, Upgradation and Control) Act, 2001. The Planning Authority considered the said application and the petitioners were informed that an amount of Rs.1,46,196/- would have to be deposited by the petitioners. In the meanwhile, there was change in Planning Authority and ultimately on 23.04.2020 the respondent no. 3 informed the petitioner no. 2 that it would not be possible to regularize the aforesaid plots since they were shown in the open space. Being aggrieved, the aforesaid communication is under challenge.

3. After hearing the learned Counsel for the parties, it is seen that pursuant to the petitioners application dated 30.07.2002 the Planning Authority examined the matter and had opined that there would be no objection to regularize the aforesaid plots. The petitioners

were informed that the amount of Rs.1,46,196/- would have to be paid and the petitioners had consented for the same on 09.04.2018. It however appears that without considering effect of the earlier note-sheets, the order dated 22.04.2020 came to be issued. It is now informed that presently the Nagpur Improvement Trust – respondent no. 2 is the Planning Authority and it would be therefore necessary for the present Planning Authority to consider the petitioners' application dated 30.07.2002. However for doing the same, the order dated 22.04.2020 passed by the Nagpur Municipal Corporation would come in the petitioners way. Since it has been found that this order was passed without considering the effect of the earlier note-sheets and demand made to the petitioner, it would be necessary to set aside this communication.

4. Accordingly, the following order is passed:-

(a) The order dated 22.04.2020 is set aside.

(b) The respondent no. 2 – Nagpur Improvement Trust shall consider the petitioners' application dated 30.07.2002 for regularization of Plot Nos. 42, 43, 48 and 49 in accordance with law after considering the earlier record. The same be done within a period of three months from the receipt of copy of this judgment.

(c) All points in that regard as raised in the writ petition are kept open.

5. Rule is made absolute in the aforesaid terms with no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)

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