

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

WRIT PETITION NO. 4606/2022

PURUSHOTTAM RAMBHAU GHONGALE
VS
THE COLLECTOR, AKOLA AND ORS

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

Court's or Judge's Order

Mr. Y.P. Kaslikar, Advocate for the petitioner
 Ms. Mrunal Barbde, AGP for respondent nos. 1 and 2
 Mr. U.J. Deshpande, Advocate for respondent no. 3

CORAM : AVINASH G. GHAROTE, J.

DATED : 03/10/2022

Heard Mr. Y.P. Kaslikar, learned Counsel for the petitioner, Ms. Mrunal Barbde, learned AGP for respondent nos. 1 and 2 and Mr. U.J. Deshpande, learned Counsel for respondent no. 3

2. By order 05.08.2022, the following position was recorded between the parties.

“Heard Mr. Kaslikar, learned counsel for the petitioner, Ms. Barabde, learned AGP for the respondent Nos. 1 & 2/State and Mr. Girdekar, learned counsel for the respondent No.3.

2. The petition challenges the order dated 29.04.2022 (page 75) passed by the respondent No.2, by which the respondent No.2 has granted the application under Section 5 of the Maintenance and Welfare of Parents and Senior Citizens Act, filed by the respondent No.3, thereby directing eviction of the petitioner from the House No. MIG 32 V.H.B. Colony Malkapur, Akola, on the ground,

that it is the self acquired property of the respondent No.3 and the petitioner, is not entitled to occupy the same to the detriment of respondent No.3. This order has been confirmed by the respondent No.1 by his order dated 03.06.2022 (page 104).

3. Mr. Kaslikar, learned counsel for the petitioner submits, that the aforesaid property is not the self acquired property of the respondent No.3, as the petitioner has contributed therein. So also he submits, that the petitioner is also having another property bearing Plot No. 46, Samarth Nagar, Malkapur, Akola, which he had purchased by the sale deed dated 17.03.2008 (page 41), which is claimed to have been gifted by him to his younger son. It is also claimed, that the respondent No.3 is presently residing with his daughter in the nearby locality, and therefore, there is no dearth of residence for the respondent No.3 and the proceedings have been initiated at the behest of the siblings of the petitioner.

4. Mr. Girdekar, learned counsel for the respondent No.3 submits, that the property is the self acquired property and there is no contribution by the petitioner whatsoever, as at the time when the property was acquired which is by the virtue of allotment letter dated 06.03.1998, at which time the petitioner was minor taking education.

5. In that context, it would be necessary to have a look at the date of allotment and the age of the petitioner.

6. Mr. Girdekar, learned counsel for the respondent No.3, is therefore directed to place on record the allotment letter dated 06.03.1998 and the terms of its allotment.

7. Mr. Kaslikar, learned counsel for the petitioner, to place on record the date of birth certificate of the petitioner.

8. *List the matter on 19.08.2022 for final order.*

9. *By an ad-interim order, the order of eviction is stayed till 19.08.2022.”*

3. The undisputed position which has come on record subsequent thereto, is that house in question was allotted to respondent no. 3 on 07.03.1998 by the Maharashtra Housing and Area Development Authority. Mr. Kaslikar, learned Counsel for the petitioner, does not dispute the allotment, however, plea is raised that the petitioner, had in fact contributed for the acquisition of the property, from his own funds. However, that plea would be required to be established in a civil court by initiating an appropriate legal proceedings in that regard and it only upon the court being satisfied regarding the correctness of the plea, can any decree be passed therein, & would be of any benefit, to the petitioner, considering which, I am not inclined to interfere in the impugned orders passed by the Authorities below. The writ petition, therefore, fails and is dismissed. No costs.

JUDGE

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