

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

WRIT PETITION (WP) NO. 515/2021

Laxmiratan Builder Private Limited,
Having it's Registered office at Plot
No. 113, Shridevi ratan Complex,
Agyaramdevi Chowk, Nagpur, Through
its Director Sagar Satyanarayan Ratan.

..... PETITIONER

// VERSUS //

1. The Nagpur Metro Region
Development Authority, Having it's
office at Station Road, Sadar, Nagpur
Through The Metropolitan Commissioner
2. The Executive Engineer-1,
The Nagpur Metro Region
Development Authority, Having it's
office at Station Road, Sadar, Nagpur
3. Uttam Maniram Pawar
Age : Adult, Occupation : Service
R/o 61, Mangaldeep Nagar No. 1
Besa Road, Nagpur.

.... RESPONDENT(S)

Shri S.S. Joshi, Advocate for the petitioner
Shri S.M. Puranik, Advocate for respondent nos. 1 and 2
Shri S.V. Deshmukh, Advocate for respondent no. 3
Shri Anand Parchure, Advocate for the intervenor

CORAM : A.S. CHANDURKAR AND SMT. M.S. JAWALKAR, J.J.

DATED : 05/04/2022

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

Rule. Rule made returnable forthwith. Heard the learned counsel for the parties.

2. The petitioner has challenged the orders dated 10.11.2020 and 05.05.2020 that have been passed by the Executive Engineer,

Nagpur Metro Region Development Authority and the Assistant Engineer-1, Nagpur Metro Region Development Authority respectively. By those orders the petitioner has been informed that its application dated 04.09.2019 seeking sanction of its proposal for development of the layout/Group Housing Scheme cannot be approved.

3. It is the case of the petitioner that it has purchased agricultural land in Survey No. 42/2 on 31.03.2017 by a registered Sale Deed. Mutation entry based on the aforesaid sale deed has also been effected. In proceedings initiated for challenging the said mutation entry this Court in Writ Petition No. 7007/2017 by the order dated 12.12.2018 restored the mutation entry standing in the name of the petitioner. Further litigation before the Revenue Authorities in that regard are pending. Regular Civil Suit No. 741/2019 in which the petitioner is one of the defendants seeks a declaration that the petitioner has no right to enter upon Survey No. 42/2 on the basis of its sale deed. On 04.09.2019 the petitioner submitted a proposal for development of said layout/Group Housing Scheme before the Nagpur Metro Region Development Authority. It is the case of the petitioner that since period of more than 60 days has elapsed from submitting such proposal, there is a deemed sanction to the same.

4. It is submitted that on 05.05.2020 the petitioner was informed by the Assistant Engineer of the Development Authority that its proposal dated 04.09.2019 could not be accepted. The petitioner on 04.09.2020 moved a representation before the respondent no. 2 that deemed sanction was granted on its proposal dated 04.09.2019. Thereafter, on 10.11.2020 the respondent no. 2 informed the petitioner that his request for sanction of his proposal was not accepted. Hence, the petitioner has challenged the aforesaid communications dated

05.05.2020 and 10.11.2020. Further relief of declaration that the petitioner's proposal has been deemed to be sanctioned has also been sought.

5. At the outset, the learned Counsel for the respondents have raised preliminary objection to the maintainability of the writ petition on the ground that against the order dated 10.11.2020 the remedy of appeal under Section 14(4) of the Maharashtra Metropolitan Region Development Authority Act, 2016 (for short the "Act of 2016") / Section 47 of the Maharashtra Regional and Town Planning Act, 1966 (for short the "Act of 1966") is available. Since an efficacious alternate remedy is available to the petitioner the writ petition is not liable to be entertained. It was submitted that the petitioner should be relegated to avail the statutory remedy.

6. In response to the aforesaid, the learned Counsel for the petitioner has raised twofold contentions. Firstly, it is submitted that the order dated 10.11.2020 has been passed in breach of principles of natural justice for the reason that the petitioner was not heard before the impugned order came to be passed. In the said order dated 10.11.2020 there was reference to certain objections raised by the respondent no. 3. Without supplying copies of such objections to the petitioner the respondent nos. 1 and 2 considered those objections and proceeded to hold that the proposal submitted by the petitioner was not liable to be granted. According to the petitioner, if an opportunity of hearing would have been granted to the petitioner it would have been in a position to satisfy the respondent nos. 1 and 2 that the proposal dated 04.09.2019 was liable to be sanctioned.

Secondly, it was submitted that the order dated 10.11.2020 has been issued by the Metropolitan Authority as defined under Section 2(d)

of the Act of 2016. Against any order passed under Section 14(1) and (3) of the Act of 2016, the remedy of appeal under Section 14(4) was provided before the State Government. It was urged that considering the provisions of Section 4 of the Act of 2016 by which the composition of the Metropolitan Authority was laid down, the remedy of appeal was illusory since the State Government itself would be required to decide the appeal and therefore that remedy was not efficacious. It was not expected that the State Government in exercise of appellate power would examine the decision taken by the Metropolitan Authority considering the provisions of Section 4 of the Act of 2016. This was one more reason for entertaining the writ petition and not relegating the petitioner to avail remedy under Section 14(4) of the Act of 2016. In that regard the learned Counsel placed reliance on the decision in *Ram and Shyam Company Vs. State of Haryana and others* [AIR 1985 SC 1147] and submitted that the writ petition was liable to be entertained.

7. In response to the aforesaid, the learned Counsel for the respondents submitted that the principles of natural justice had not been violated while passing the impugned order. The reason indicated in the impugned order for refusing to grant approval was the pendency of proceedings before the Co-operative Court. Even if the petitioner was granted any opportunity of hearing the same would not have made any difference for the reason that dispute with regard to Survey/Khasra No. 42/2 was in fact pending before the Co-operative Court. Moreover, the petitioner did not indicate the fact that such dispute was pending while moving the proposal dated 04.09.2019. When this fact was brought to the notice of the respondent nos. 1 and 2 the impugned order came to be passed. It was also submitted that the remedy of appeal provided under Section 14(4) of the Act of 2016 could not be said to be illusory. Initial order passed under Section 14(2) of the Act of 2016 was by exercise of

executive powers while the powers exercised under Section 14(4) would be quasi-judicial in nature. It was also submitted that an appeal under Section 47 of the Act of 1966 preferred by one of the objectors was pending before the competent authority and therefore the petitioner could be directed to avail the statutory remedy as provided. On this count, it was submitted that the writ petition was not liable to be entertained on merits.

8. We have heard the learned Counsel for the parties and we have gone through the documents filed on record. Considering the preliminary objection as raised it would be necessary to examine whether the order dated 10.11.2020 that is impugned in the writ petition has been passed without granting due opportunity to the petitioner. It is not in dispute that on 14.09.2019 the petitioner had made an application seeking sanction to layout/Group Housing Scheme under the Act of 2016. This application was in the light of the provisions of Section 14(2) of the Act of 2016. The Metropolitan Authority under Section 14(3) of the Act of 2016 is required to consider the grant or refusal of such permission with or without imposing conditions. This has to be done after making such enquiry as it deems fit. It is seen from the impugned order that the respondent no. 2 has referred to pendency of Dispute No. 366/2011 in the Co-operative Court as a reason for refusing to grant approval to the proposal moved by the petitioner. In this context, the learned Counsel for the petitioner by filing Pursis Stamp No. 03/2021 has placed on record the Note Sheet maintained by the respondent no. 1 in the matter of the petitioner's proposal dated 14.09.2019. The same indicates that on 21.10.2020 the Assistant Engineer and thereafter the Executive Engineer of the respondent no. 1 proceeded to recommend taking of a favourable decision on the proposal of the petitioner to the superior authority. Thereafter the respondent no.

2 considered the matter and on 05.11.2020 referred to the objections raised by the third respondent in which it was stated that Regular Civil Suit No. 741/2019 was pending. Based on the aforesaid aspect, the respondent no. 2 on 06.11.2020 proceeded to reject the said proposal and the same was informed to the petitioner.

9. From the aforesaid, it becomes clear that when the petitioner's proposal dated 04.09.2019 was under consideration the third respondent raised an objection on 14.09.2019. On 05.11.2020 some more documents were submitted by the third respondent and after considering the same immediately on the next day the respondent no. 2 proceeded to reject the petitioner's proposal dated 04.09.2019. It is an admitted position that the petitioner was not heard when the order dated 10.11.2020 was passed. It is thus found that the impugned order has been passed firstly by not hearing the petitioner before passing it and secondly by taking into consideration the objection raised by third respondent but without giving any opportunity to the petitioner to counter the same. Though it was urged by the learned Counsel respondent nos. 1 and 2 that grant of hearing in these facts would not have changed the ultimate decision, the same cannot be said to be the only conclusion that could be drawn as urged by the respondent nos. 1 and 2. If the petitioner would have been heard he would have been in a position to convey his stand that the pendency of the proceedings in Court would not have affected acceptance of his proposal dated 04.09.2019. We therefore find that in the present case the petitioner has been visited by an adverse order without granting him an opportunity of putting forward his case. For the same reason the order dated 05.05.2020 is also required to be set aside to enable the petitioner to put forth his case. The impugned orders dated 05.05.2020 and 10.11.2020 are thus liable to be set aside on the ground that the said orders had

been passed in breach of principles of natural justice.

10. Since we find that the impugned order has been passed in violation of principles of natural justice it is not necessary to go into the other contention raised by the petitioner that the remedy of appeal as provided under Section 14(4) of the Act of 2016 is illusory in nature or that the same would be an appeal from Ceaser to Ceaser. In the light of aforesaid discussion, the following order is passed:-

The writ petition is allowed in terms of prayer Clause (b). The orders dated 05.05.2020 and 10.11.2020 are set aside. The respondent nos. 1 and 2 shall consider the petitioner's proposal dated 04.09.2019 afresh in the light of the objections raised by the respondent no. 3. The applicant who has sought to intervene in this writ petition by filing Civil Application (CAW) No. 236/2022 is free to raise objections before the respondent nos. 1 and 2 in accordance with law. The petitioner shall be served with a copy of the objections as raised and after hearing all concerned, fresh decision in the matter be taken and communicated to the parties.

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

12. Civil Application (CAW) No. 236/2022 is also disposed of.

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

(A.S.CHANDURKAR, J.)