



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

WRIT PETITION NO. 1787 of 2023

Vishnugopal s/o Ganeshlal Sahu and ors. **PETITIONERS**

...V E R S U S...

The State of Maharashtra, Urban Development
Department through Secretary, Mantralaya,
Mumbai and others. . **RESPONDENTS**

Ms Rashi A.Deshpande, Advocate for petitioners.
Ms S S Jachak, Assistant Government Pleader for respondent no.1.
Mr. Girish Kunte, Advocate for respondent nos. 2 and 3.
Mr. Neelesh M. Gaidhane, Advocate for respondent no.4.

CORAM :- A.S.CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.
ARGUMENTS WERE HEARD ON : 01.08.2023
ORDER IS PRONOUNCED ON : 23.10.2023

P. C.

Challenge raised in the present writ petition filed under Article 226 of the Constitution of India is to the decision taken as indicated in the Note Sheet dated 08.03.2021 by the second respondent-Nagpur Municipal Corporation through its Municipal Commissioner with regard to taking over possession of land admeasuring 3641.19 square meters from Gat Nos. 68 and 69 for public utility purpose and preparing a possession receipt in that regard. Challenge is also raised to the possession receipt dated 01.04.2021 indicating possession of the aforesaid land being taken by the Estate Officer, Nagpur Municipal Corporation from the fourth

respondent-President, Ganeshdham Nagrik Samiti, a public Trust registered under the Maharashtra Public Trusts Act, 1950 (for short, the Act of 1950).

2. In the writ petition, the following prayers have been made by the petitioners:

(i) *Kindly declare that the entire action of the respondent Corporation i.e. 2, 3 and 4 is illegal, null and void and cannot sustain in the eyes of law, it be further declared that the respondent no.4 has no right to surrender the property of the petitioner to respondent Corporation and the Respondent Corporation authorities have no right to receive the property of the petitioner.*

(ii) *Quash and set aside the Order dated 08.03.2021 passed by R.No.2 (now annexed as Annex-W) and consequently order dated 01/04/2021/02.04.2021 (Annexure P) passed by Respondent no.3 in the interest of justice and further be pleased to declare all consequential orders as illegal and against the provision of law.*

(iii) *Kindly grant stay to the impugned order dated 08.03.2021 and order dated 01.04.2021 (Annexure-P) passed by respondent Corporation and restrain the respondent Corporation from interfering or creating third party interest or illegally transferring the property of petitioner through their workers, agents or associates in any manner in the interest of justice.*

(iv) *Direct the respondent no.5... **(this prayer clause is deleted in view Hon'ble Court order dated 21.03.2023)***

(v) *Kindly grant compensation to the tune of Rs.10(Ten) Lacs to the petitioner Trust for mental harassment caused due to deceptive and illegal action of the respondent nos. 3 and 4 jointly and severally.*

(vi) *Any other relief which this Hon'ble Court deems fit and proper under the facts and circumstances of the case."*

3. On hearing the learned counsel for the parties and after perusing the records of the case, we find that consideration of the prayers made in the writ petition would require factual adjudication on various disputed aspects. The same are as under :

(a) On 12.09.2020 the President of the fourth respondent issued a communication to the Nagpur Municipal Corporation stating therein that land to the extent of 3641.19 square meters from Gat Nos.68 and 69 earmarked as public utility land be taken over and mutation entry to that effect be recorded (Page 319 of the writ petition). On that basis the Municipal Corporation authorities on 08.12.2020 prepared a note sheet requiring spot inspection to be undertaken to enable transfer of this land in favour of the Municipal Corporation (Page 320 and 321 of the writ petition). On aforesaid basis, Note Sheet dated 08.03.2021 came to be prepared authorising the taking over of possession of land to the extent of 3641.19 square meters (Page 208-A and 208-B of the writ petition). Pursuant thereto, on 01.04.2021 possession of the aforesaid land was taken over by the Estate Officer of the Nagpur Municipal Corporation and possession receipt to that effect was executed (Page 133 of the writ petition).

The aforesaid indicates that presently the subject land vests with the Municipal Corporation and possession of the same lies with it. According to the petitioners, the President of the fourth respondent had no authority in law to deliver possession of the said land to the Estate Officer. This specific

stand has been pleaded by the petitioners in paragraph 15 of the writ petition. The same reads as under:

“15..... It is surprising that the Respondent No.4 is a stranger to the property of the petitioners. He has no right, title or interest in the land of the petitioner. He has no right to deliver the property nor respondent Corporation i.e. 2 has any right to take the property and on the face value it would be unfair betray and confidence of the petitioners by making statement which are untrue and misleading. That to receive, accept or claim of the petitioners property knowing that they have no right or claim to such property is cognizable and punishable offence and as such the respondent no.5 ought to have registered an offence against the wrongdoers”...

It is thus clear that unless the issue as regards title to the aforesaid property as well as entitlement of the President of the fourth respondent to hand over possession of the subject land to the Estate Officer is resolved, which is the bone of contention between the petitioners and the President of the fourth respondent, no effective relief can be granted to the petitioners.

(b) The petitioners seek to rely upon the order dated 29.12.2001 that has been passed by the Assistant Director of Town Planning, Nagpur, permitting change of user of the subject land for non-agriculture use. It their assertion that 10% of the land from Survey Nos. 68 and 69 was required to be kept reserved for public utility. They seek to rely upon the endorsement against Clause No.3 of the said document to urge that such public utility

activities could include school, electrical sub-station, etc. (Page 88 of the writ petition). On the other hand, the President of the fourth respondent seeks to rely upon the very same document dated 29.12.2001 and it is his case that against Clause No.3 there is no mention whatsoever of the nature of public utility activities such as school, electric sub-station, etc. (Page 206 of the writ petition). It is his case that the document at page 88 of the writ petition relied upon by the petitioners is not a genuine document while the document relied upon by the President of the fourth respondent is a photocopy of the original document. Specific assertion in that regard can be found in paragraph 5 of the preliminary submissions that were filed by the said respondent in Writ Petition No. 3790 of 2022 which was an earlier writ petition preferred by the fourth petitioner herein. (Page 188 of the writ petition). These assertions are reiterated in paragraph 4 of the preliminary submissions filed in the present proceedings (Page 230 and 231 of the writ petition).

Since both the contesting parties seek to rely upon the document dated 29.12.2001 and there is a dispute between them as regards the authenticity of the said document, said aspect cannot be resolved merely on the basis of the affidavits and counter-affidavits filed by the parties.

4. From the aforesaid, it is clear that unless the basic issue with regard to right, title and interest in the subject land is determined in the light

of the rival claims of the petitioners and the President of the fourth respondent, the prayer seeking a declaration that President of the fourth respondent had no right to surrender the property in favour of the Municipal Corporation cannot be adjudicated. It would therefore be necessary for the petitioners to establish their legal rights in the subject property first before the prayers sought by them could be considered. In exercise of writ jurisdiction under Article 226 of the Constitution of India, such factual determination of rights cannot be undertaken. For this reason we decline to entertain the writ petition and consider the prayers made therein on merits. Instead, it would be open for the petitioners to invoke appropriate jurisdiction for seeking resolution of the disputed questions that arise in the present proceedings.

5. In view of aforesaid, the writ petition is not entertained since it seeks resolution of various disputed questions. Keeping all points raised in the writ petition open and with liberty to the petitioners to invoke appropriate jurisdiction in accordance with law for seeking redressal of their grievances, the writ petition is disposed of. The parties shall bear their own costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)