

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

WRIT PETITION NO. 4832 OF 2023

Nagpur Improvement Trust through its Chairman, Nagpur and another
..VS..
State of Maharashtra and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.M. Pande, Advocate for Petitioner.
Ms. Tajwar Khan, AGP for Respondent Nos.1 & 2.

CORAM : ANIL S. KILOR, J.
DATED : AUGUST 07, 2023.

1. Heard.
2. The present writ petition is filed by the Nagpur Improvement Trust and Superintending Engineer, Nagpur Improvement Trust, Nagpur and the orders dated 27.11.2009 and 04.05.2010, passed by the Joint Charity Commissioner, Nagpur, are under challenge.
3. The Joint Charity Commissioner vide order dated 27.11.2009 directed the petitioner No.2 to stop all activities which include digging for trench, fixing of the stones, demarcating the plot, impeding the poles of the suit land bearing Gat Nos. 74/1, 74/4, 74/5 and 74/6 of the trust.
4. The Joint Charity Commissioner vide order

dated 04.05.2010 rejected the application moved by the petitioner No.2 for restoration of proceeding.

5. Thereafter, the order dated 27.11.2009, which was also impugned in the present writ petition, was the subject matter of Writ Petition No. 3693/2011 filed by the some plot owners. The said writ petition was disposed of by observing thus :-

“We have also noted that the planning authority has not challenged the order which has been passed by Joint Charity Commissioner. The public trust itself was not party to said proceedings.

In this situation as appeal filed by public trust is pending we permit present petitioners to approach that Court by appropriate application or to file independent appeal in accordance with law. We also expedite the proceedings in pending appeal filed by public trust and direct that Court to decide the same within a period of six months from today. If the petitioners have got any other grievance the petitioners are free to approach appropriate forum in that respect. With these directions we dispose of the petition. No costs.”

6. It is important to note that when the said writ petition was disposed of, Miscellaneous Civil Appeal No.825/2011 was pending before the District Judge, Nagpur and in that matter, the Division Bench of this Court permitted the said petitioners to approach the

Appellate Court by filing application in the said proceedings. The said order passed by the Division Bench of this Court dated 29.02.2012 was subject matter in Special Leave to Appeal (Civil) 20885/2012, before the Hon'ble Supreme Court, which came to be dismissed and thereafter the Appeal pending before the District Judge was dismissed for want of prosecution on 26.11.2014.

7. In the above referred backdrop on the point of delay and laches, the learned counsel for the petitioner has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of ***Tukaram Kana Joshi and others Vs. Maharashtra Industrial Development Corporation and others***, reported in ***(2013) 1 SCC 353***, wherein the Hon'ble Supreme Court of India held thus :-

“14. No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to

have a vested right in the injustice being done, because of a non- deliberate delay. The court should not harm innocent parties if their rights have in fact emerged, by delay on the part of the Petitioners. (Vide Durga Prashad v. Chief Controller of Imports and Exports, AIR 1970 SC 769; Collector (LA) v. Katiji, AIR 1987 SC 1353; Dehri rohtas Light Railway Co. Ltd. V. District Board, Bhojpur, AIR 1993 SC 802; Dayal Singh v. Union of India, AIR 2003 SC 1140; and Shankara Coop. Housing Society Ltd. v. M. Prabhakar, AIR 2011 SC 2161) ”

8. In the present matter, admittedly, the present petition has been filed by the Planning Authority and not by the plot owners. Moreover, in the petition no justification has been provided for such a huge delay of fourteen years.

9. In the circumstances, I found substance in the objection raised by the learned A.G.P. Ms. Tajwar Khan that the present petition is not tenable at the instance of Nagpur Improvement Trust and Superintending Engineer as they have not filed any proceeding before the District Judge in an appeal in the light of the liberty granted by the Division Bench of this Court vide order dated 29.02.2012.

10. In the circumstances, I do not find any merit in the present petition. Accordingly, the writ petition is dismissed.

11. The petitioners are at liberty to file appropriate proceedings as available under the law. If any such proceedings is filed, the Court or the authority shall not be influenced by any of the observations made in this petition while considering the issue of tenability and limitation.

JUDGE

Kirtak.