

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

WRIT PETITION NO. 5388 OF 2022

Abdullakhan s/o Amanullakhan,
Aged about 51 years,
Occupation – Business,
R/o Bangali Panja, Maskasath, Nagpur.

.... **PETITIONER**

VERSUS

1) State of Maharashtra,
through Secretary, Urban Development
Department, Mantralaya, Mumbai-32.

2) Chairman,
Nagpur Improvement Trust,
N.I.T. Building, Residency Road,
Sadar, Nagpur.

3) Divisional Officer (East),
N.I.T. Office, Surya Nagar, Kalamna
Road, Nagpur.

.... **RESPONDENTS**

Mr. P.K. Mishra, Counsel for the petitioner,
Mr. M.K. Pathan, AGP for respondent 1,
Mr. P.S. Tiwari, Counsel for respondent 2.

CORAM : ROHIT B. DEO & MR. M.W. CHANDWANI, JJ.
DATED : 20th JUNE, 2023

ORAL JUDGMENT : (PER : R.B. DEO, J.)

Rule. Rule made returnable forthwith. Heard finally with consent of the parties.

2. The petitioner is assailing the communication dated 25-7-2022 issued by the Nagpur Improvement Trust (NIT) and is seeking a declaration that agriculture land Survey 117 belongs to the petitioner and is not the subject of acquisition. A further declaration is sought that NIT is not entitled in law to enter upon agricultural land Survey 117 belonging to the petitioner.

3. The petitioner contends that his grandfather purchased 25.04 acres at Bandwari, Nagpur on 05-11-1952 from Mrs. Saubhagyawati Mitra. The purchase was in the name of the father of the petitioner Mr. Amanullakhan who was then minor.

4. The petitioner then refers to Land Acquisition Case 35 & 36/A-65/1956-57. The petitioner avers that the said land acquisition proceedings were initiated in respect of Survey 116 and possession of 28 acres 20 decimals land was taken by NIT on 03-1-1964.

5. The petitioner submits that agricultural land Survey 117 was never acquired by NIT and that his father Mr. Amanullakhan continued to be the recorded owner.

6. The petitioner then submits that although no acquisition proceedings were initiated, and no possession of land Survey 117 was taken, in June 2021 some officers of NIT, whom the petitioner does not name in the petition, visited the spot and claimed that land Survey 117 is under acquisition. When the petitioner sought information from NIT whether land Survey 117 is acquired, the respondents replied vide communications dated 15-7-2021 and 05-7-2021 that the record of the acquisition was not available in their office.

7. The petitioner then claims that on 25-7-2022 the notice impugned was issued. According to the petitioner, he is wrongly shown to be the owner of land Survey 116 and is further directed to remove his construction, marking, and layout internal roads within three days.

8. In sum and substance, the case of the petitioner is that while the notice impugned pertains and is restricted to land Survey 116, there is an apprehension that the NIT may take possession, full or in part, of land Survey 117.

9. NIT has filed affidavit-in-response dated 13-6-2023. NIT claims that the petitioner has suppressed the fact that the land acquisition proceedings 35 & 36/A-65/1956-57 were also in respect of land Survey 117 and culminated in award dated 21-11-1961 which is placed on record. NIT further asserts that compensation for both Survey 116 and Survey 117 was granted. In paragraph 6, NIT claims that although the notice impugned pertains to land Survey 116, it was issued to the petitioner since the petitioner has carved out an illegal layout on Survey 116.

10. We have perused the award dated 21-11-1961 and we note that it is not only Survey 116 which is acquired, Survey 117 is also acquired.

11. The learned Counsel for the petitioner Mr. P.K. Mishra, however, submits that the award dated 21-11-1961 is in favour of

Mr. Enayatullakhan and others who are not related to his father Mr. Amanullakhan. Mr. P.K. Mishra invites our attention to the sale-deed dated 03-11-1952 executed by Mrs. Saubhagyawati Mitra in favour of the father of the petitioner Mr. Amanullakhan. Mr. P.K. Mishra submits that while the entire Survey 117 admeasures 25 acres, the sale-deed executed in favour of the petitioner's father is in respect of small portion of 0.80 R. which according to Mr. P.K. Mishra is approximately 2 acres.

12. In writ jurisdiction, it would be extremely difficult if not impossible for us, to look into the narrative and the counter-narrative. The petitioner is admittedly not the owner of Survey 116. The NIT contends that the entire 25 acres comprising Survey 117 is acquired by the award which is passed seventy years ago.

13. In this situation, we are not inclined to interfere in writ jurisdiction.

14. Subject to the law of limitation, the petitioner is at liberty to agitate the grievance in the appropriate Forum including the civil

Court, if so advised.

15. Interim order shall stand vacated.

16. The petition is disposed of.

(Mr. M.W. Chandwani, J.)

(Rohit B. Deo, J.)

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