



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

MISC. CIVIL APPLICATION (MCA) NO. 1167 OF 2023

IN
WRIT PETITION NO. 1787 OF 2023

Vishnugopal s/o Ganeshlal Sahu and Ors.

Vs.

State of Maharashtra, Urban Development Department, Thru. Its Secretary,
Mantralaya, Mumbai and Ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Ms. Rishi A. Deshpande, Advocate for petitioners.
Ms. Shamshi Hyder, AGP for respondent/State.

CORAM : SMT.ANUJA PRABHUDESSAI, AND
MRS.VRUSHALI V. JOSHI, JJ.

DATE : 20.12.2023.

The petitioners seek review of order dated 23.10.2023 in Writ Petition No.1787/2023. By the said order, this Court had declined to entertain the writ petition, considering the fact that the petition involved disputed questions of facts. The petition would require factual adjudication on various disputed aspects.

2. Learned counsel for petitioners states that there is an error apparent on the face of record as the title of the petition was not in dispute. We

have perused the records, particularly, paragraph 3 of the order, which reads thus:

“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.”

3. We do not find any error apparent on the face of the record, the application is not within the scope and ambit of Order 47 of the Code Civil Procedure. The application is dismissed. No costs.

JUDGE

JUDGE