



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

WRIT PETITION NO. 6426 OF 2023

(MILIND BALAJI GANDHI..VS.. CITY OF NAGPUR CORPORATION & OTH.)

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

Court's or Judge's orders

Ms Smita P. Deshpande, Advocate for Petitioner.
Shri J.B.Kasat, Advocate a/w Shri Vinay Dahat, Adv. for Resp. No.1.
Ms Pallavi Mahashabde, Respondent No.2-in person.

CORAM : ANIL S. KILOR, J.
DATED : APRIL 18, 2024.

1. Heard.
2. The judgment and order dated 08/09/2023 passed below Exh.34 by the District and Sessions Judge No.6, Nagpur in Misc.Civil Appeal No.49 of 2023, dismissing the appeal and thereby confirming the order dated 02/03/2023 passed by the learned Joint Civil Judge Junior Division, Nagpur in Regular Civil Suit No. 208 of 2018, rejecting the application preferred by the petitioner/plaintiff for temporary injunction in a suit for declaration, permanent injunction, is under challenge in this writ petition.
3. The brief facts, which give rise to the present petition are as follows :
 - a) The petitioner was co-owner of the house property situated at 162 admeasuring 115.648 sq. meters, ward No. 127, City Survey No. 321, Ram Mandir Galli, Mahal, Nagpur. There was a

dispute between the petitioner and co-owners, and the said dispute was settled between the petitioner and his co-owners during the pendency of the suit in the court of the 3rd Jt. Civil Judge Jr. Dn., Nagpur. Accordingly, the said matter ended in an amicable settlement, which resulted in the petitioner and his brother, mother, and sisters owning 40% of the total house property. Petitioner's sisters relinquished their share in favor of the petitioner; thus, he became the absolute owner of the above-mentioned property from the southern side.

- b) Thereafter, the petitioner constructed the house by demolishing the old structure as per the sanctioned plan. Despite that, respondent No. I Corporation issued a notice dated January 12, 2018 to the petitioner under Section 53 of the Maharashtra Regional and Town Planning Act, 1966. Thereupon, the petitioner filed a suit for declaration and permanent injunction against respondent No. 1. seeking declaration that the Municipal Corporation is not entitled to demolish part of the house property of the petitioner as per Notice u/s 53 (1) of the MRTP Act 1966.

- c) Additionally, the petitioner filed an application for temporary injunction, which was dismissed by the trial court vide order dated April 18, 2018. Thereafter, an appeal was filed by the petitioner before the District Judge, Nagpur, against the order dated April 18, 2018. The appellate court set aside the order of the trial court by order dated August 29, 2018 and remanded the matter back for fresh consideration after the measurement of the suit property through the Court Commissioner.
- d) The trial court appointed the Court Commissioner on February 16, 2019; a report was subsequently prepared by the commissioner, which was objected by the petitioner claiming improper measurements. The trial court, vide order dated 10/10/2019, rejected the objection of the petitioner and upheld the report of the commissioner.
- e) The petitioner, being aggrieved by the order of the trial court, filed a writ petition bearing No. 101/2020, challenging the report of the Commissioner, which was dismissed vide order dated January 21, 2020. Subsequently, review application filed by the petitioner against the order dated January 21, 2020, whereby the high

court was directed to cross-examine the court commissioner vide order dated August 6, 2021.

- f) In view of the order dated 06/08/2021, the petitioner filed the application for cross-examination of the commissioner, which was rejected by the Joint Civil Judge Jr. Division, Nagpur, vide order dated 02/03/2023. Thereafter, an appeal was filed before the District and Session Judge, Nagpur, under Misc. Civil Appeal No. 49/2023. The Appellate Court rejected Misc. Civil Appeal No. 49/2023, vide order dated September 8, 2023. Hence, this petition.

4. The learned counsel for the petitioner submits that the construction made by the petitioner is as per the sanctioned plan filed along with the petition at Page Nos. 38 and 39. It is further submitted that, the area of the excess construction mentioned in the impugned notice dated 12/01/2018 is without carrying out measurement by the Respondent No.1. Moreover, the measurement carried out by the Court Commissioner is erroneous and not acceptable to the petitioner.

5. Thus, a query was put to the petitioner that if it is the case of the petitioner that the construction is as per the sanctioned plan at Page Nos.38 and 39, whether the

petitioner is ready to allow the defendant No.1 to remove the construction, if any, found contrary and in excess to the above referred sanctioned plan. The petitioner has shown willingness and agreed to permit the defendant No.1 to remove the construction contrary to the sanctioned plan at Page Nos. 38 and 39 of the paper book.

6. In the circumstances, I am of the opinion that the petition can be disposed of by protecting the interest of the petitioner to the extent the construction made by the petitioner as per the above referred sanctioned plan and the building permit filed on record at Page Nos. 33 to 37.

7. Accordingly, I pass the following order :

- i) The writ petition is disposed of.
- ii) The construction of the residential house of the petitioner, as permissible under the sanctioned plan dated 02/01/2004 and the Building Permit dated 02/01/2004, is hereby protected.
- iii) If any construction in excess or contrary to the sanctioned plan or the building permit is found, the Respondent No.1 is at liberty to remove/demolish the same as agreed for by the petitioner.

- iv) The Respondent No.1, while removing excess construction, if any, shall take utmost care not to cause damage to the construction made as per the sanctioned plan and the building permit.

The Writ Petition is **disposed of** accordingly.
No order as to costs.

JUDGE

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