2025:BHC-NAG:8087-DB

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

MISC. CIVIL APPLICATION (REVIEW) NO. 613 OF 2022
IN
WRIT PETITION NO. 672 OF 2019

Dhanraj S/o. Harichand Khandelwal,
Aged about 67 years, Occ: Business,
R/o. Plot No.2, Buty Layout,
Dharampeth, Nagpur.

…. APPLICANT.
(Org. Petitioner)

// VERSUS //

1. The State of Maharashtra,
   through its Secretary,
   Urban Development Department,
   Mantralaya, Bombay.

2. Nagpur Municipal Corporation,
   Through its Commissioner, having
   its office at Civil Lines, Nagpur.

3. The Estate Officer, Nagpur Municipal
   Corporation, Civil Lines, Nagpur.

4. The Collector, Nagpur, Office at
   Civil Lines, Nagpur.

…. RESPONDENTS.

Shri P.V.Vaidya a/w Shri G.K.Mundhada, Advocate for Applicant/Petitioner.
Ms Shamsi Haider, A.G.P. for Respondent No.1/State.
Shri J.B.Kasat, Advocate for Respondent Nos.2 & 3.

CORAM : ANIL S. KILOR AND
PRAVIN S. PATIL, JJ.

DATE OF RESERVING THE JUDGMENT : 17/04/2025
DATE OF PRONOUNCING THE JUDGMENT : 13/08/2025

<u>ORAL JUDGMENT</u> : (Per : Anil S. Kilor, J.)

1. Heard.

2. **RULE.** Rule made returnable forthwith. Heard by consent of the learned counsel for the parties.

3. By way of the present application the applicant is seeking review of the judgment dated 30/09/2021 on various grounds as argued by the applicants. However, before considering the submissions, the relevant portion of the judgment dated 30/09/2021 is reproduced herein below :

> *"5. Section 79 (f) (b) of the said Act requires that no property transferred to the Corporation by the Government shall be leased, sold or otherwise conveyed in any manner contrary to the terms of the transfer except with the prior sanction of the appropriate Government.*
>
> *6. In the present case, Petitioner has not established the fact that initially the conservancy lane was a Government property and it was transferred to Nagpur Municipal Corporation, and therefore, the provisions of Section 79 (f) (b) of the said Act would have no application to the present case. That would mean that the approval granted by the State Government on 12/8/2013 would not bind the Corporation in the manner that Corporation will be compelled to charge from the Petitioner the premium, at the same rate, as what is prescribed in the current ready reckoner. There is also on record a report sent by the Collector, Nagpur on the request of the Court. This report dated 15/11/2019 is already marked as document 'X'. This report shows that the conservancy lane was at no point of time a Nazul land. It records the fact that the conservancy lane is the land, which is recorded in the name of Nagpur Improvement Trust, and that it was not a Nazul land at any point of time. This report substantiates the*

stand taken by the Respondent Nos. 2 and 3 that the conservancy lane was not a Government land was beyond the pale of Section 79(f)(b) of Maharashtra Municipal Corporations Act.

7. The above referred facts would show that the approval granted by the State Government, by its communication dated 12th August 2013, would not bind Nagpur Municipal Corporation in the manner that Nagpur Municipal Corporation will be compelled to charge from the Petitioner only as much premium as is equivalent to the rate prescribed in the current ready reckoner, and that Nagpur Municipal Corporation would be at liberty to determine premium in the reasonable manner, by following due process, which Nagpur Municipal Corporation had already done, when it passed the resolution in this regard on 29th February, 2008. By this resolution, it was decided by Nagpur Municipal Corporation that for leasing out conservancy lane, the premium would be charged at twice the charge as prescribed in the current ready reckoner. There is another aspect involved in this Petition.

8. After the demand notice was issued to the Petitioner, calling upon him to deposit twice the amount, as prescribed in the current ready reckoner as a premium for grant of lease to conservancy lane in December-2014, the Petitioner instead of challenging the demand notice, accepted the demand notice and deposited the amount and thereafter the Petitioner also got executed lease of the conservancy lane in his favour. Thus, the Petitioner, by his own acts has made himself disentitled to raise any question or challenge to what has already been done by the Corporation, when it issued the demand notice in December-2014 and executed the Lease Deed in favour of the Petitioner.

9. Learned Counsel for the Petitioner has placed reliance upon the view taken by the Coordinate Bench of this Court in Writ Petition No. 1479/2017 decided on 10th November, 2017, wherein the Division Bench has held that in view of the approval given by the State Government in that Petition, the conservancy lane would have to be allotted to the adjacent land owner on the same terms and conditions, on which the original land/plot is allotted to him. Thus, the Division Bench directed the Corporation that, if any refund was necessary,

> *same be made over to the Petitioner within time stipulated in the Judgment.*
>
> *10. As rightly pointed out by Mr. Kasat, learned Counsel for the Respondent Nos.2 and 3, this decision would not cover the facts of the present case, for the reason that what was involved in that Petition, was the Government land which was transferred to Nagpur Municipal Corporation, which is not the case here, as would be disclosed by the facts discussed earlier.*
>
> *11. In view of above, we find no merit in the present Petition. Writ Petition stands dismissed. Rule is discharged. No costs."*

4. A short argument came to be made by the applicant that the respondent No.2-Corporation passed a resolution dated 30/11/2011 amending the resolution dated 29/02/2008 and thereby resolved that instead of double the market rate, as prescribed in earlier resolution, the rates to be charged should be as per the Ready-Reckoner rates for the particular year. Therefore, according to the petitioner, the petitioner was wrongly charged with twice the rates as Ready Reckoner, as per the earlier Resolution No.157, dated 29/02/2008 though it was never approved and even the respondent No.2 had amended the said resolution by another resolution No.295.

5. It is argued that even if as held by this Court that the approval of the respondent No.1 is not necessary to such resolution, the fact remains that the resolution No.157, dated 29/02/2008 on which this Court has relied upon, was amended vide resolution dated 30/11/2011.

6. On the other hand, the learned counsel for the respondent Nos. 2 and 3 argues that there is no error committed by the Court and as there is no ground for review, this Court may not entertain the present application.

7. It is argued that the application of the applicant is dated 13/09/2013, which was approved by the Municipal Commissioner on 16/12/2013 and as per the approval granted by the State Government by communication dated 12/08/2013 to the resolution dated 157 dated 29/02/2008 the premium amount was demanded from the applicant which he paid without any demure and accordingly the lease was extended on 12/08/2015. It is argued that the resolution No.295 dated 30/11/2011 was forwarded to the State Government was pending and vide communication dated 12/08/2013 the resolution No.157 was approved. It is therefore, submitted that no case is made out for review.

8. In light of the rival submissions we have perused the record, from which it is evident that the resolution No.295 dated 30/11/2011, amending the earlier resolution No.157 dated 29/02/2008, had received approval by the State Government vide communication dated 12/08/2013. As per the resolution No.157 the requirement to pay twice the rate of Ready-Reckoner was amended and the payment of premium was restricted to the rate of Ready Reckoner.

9. Admittedly, the date on which the petitioner applied for lease is 13/09/2013, the Municipal Commissioner granted approval on 06/12/2013. Thus, it is evident that on the date of the application the Government had already granted approval to the amendment to resolution No.157. Thus, it cannot be said that on the date of application or approval of the application of the petitioner, the old policy was in force as per the resolution No.157. It is further evident that on the date of the approval of the application of the petitioner Resolution No.295 had come in force because of the approval granted by the Government. Thus, we are of the opinion that this important aspect was missed by this Court and was not considered while passing the impugned judgment.

10. In the circumstances, the amount recovered as a premium for granting lease from the petitioner cannot be allowed to be retained by the respondent Nos. 2 and 3, only on the ground that the amount was paid by the petitioners without any demure. In fact, the respondent Nos. 2 and 3 were duty bound to make the demand of premium as per the policy previously on the date of the approval of the application of the petitioner for lease.

11. In that view of the matter, since the error is apparent on the face of the record and cannot be permitted to continue for the reasons stated herein above, we proceed to pass the following order :

i) The Miscellaneous Civil Application is **allowed**.

ii) The judgment and order dated 30/09/2021 is hereby recalled and reviewed to the extent that the applicant/petitioner is entitled to receive the amount back which was paid by him in excess to the amount recoverable as per the Resolution No.295 dated 30/11/2011.

Rule is made absolute accordingly. No order as to costs.

(PRAVIN S. PATIL, J) (ANIL S. KILOR, J)

RRaut..