



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

WRIT PETITION NO. 1002 OF 2024

Gousiya Labour Co-operative Housing
Society Ltd., Nagpur, having Reg.
No.NGP/HSG/236/1966, through its
Secretary – Suryakant S/o Gendasingh
Thakur, Aged about 54 years,
R/o. Thakur Apartment, Tilak Nagar,
Amravati Road, Nagpur.

....**PETITIONER**

...VERSUS...

1. The State of Maharashtra,
through its Secretary,
Department of Urban Development,
Mantralaya, Mumbai-32.
2. The Nagpur Improvement Trust
Office at Civil Lines, Nagpur
through its Chairman.
3. The Deputy Director of Town
Planning, Nagpur Improvement
Trust, Sanskrutik Sankul,
Third Floor, Opposite NIT
Swimming Pool, North Ambazari
Road, Nagpur -440033.
4. The Building Engineer (South),
Nagpur Improvement Trust,
Civil Lines, Nagpur.

...**RESPONDENTS**

Shri Sunil Manohar, Senior Counsel a/b. Mr. Nitin A. Jachak,
Counsel for Petitioner.

Shri P. P. Pendke, AGP for Respondent No.1/State.

Shri Prakash S. Tiwari, Counsel for Respondent Nos. 2 to 4.

**CORAM : SMT. M.S. JAWALKAR AND
PRAVIN S. PATIL, JJ.**

DATE OF RESERVING THE JUDGMENT : 22/08/2025

DATE OF PRONOUNCING THE JUDGMENT: 04/09/2025

JUDGMENT (PER : SMT. M.S. JAWALKAR, J.)

Rule. Rule is made returnable forthwith. Heard finally by consent of learned counsel appearing for both the parties.

2. The Petitioner by this Petition has challenged the impugned Communication dated 05/06/2023, issued by the Respondent No. 3-The Deputy Director of Town Planning, Nagpur Improvement Trust.

3. The Petitioner Society developed a residential layout on Survey Nos. 52 and 54, Mouza-Bidipeth, and retained Plot Nos. 19A to 19D admeasuring 11,500 sq. ft.,

possession of which was handed over to its then President on 04/12/2000. Upon commencement of the Maharashtra Gunthewari Developments (Regularization, Upgradation and Control) Act, 2001, (for short the "Gunthewari Act"), the Petitioner applied for regularization and, on 04/11/2016, deposited the requisite charges including those for removal of reservation. The said plots were thereafter amalgamated, and on 23/11/2022, the Nagpur Improvement Trust issued an amalgamation letter along with an approved Map. Subsequently, Respondent No. 2 issued an allotment letter on 25/11/2022 and delivered possession of the plot Nos.19A to 19D on 28/11/2022 to the Petitioner as lessee, upon payment of charges for registration of lease deed.

4. Despite completion of these formalities, Respondent No. 3, vide a Communication dated 24/03/2023, stated that the plots stood reserved for Higher Education (Reservation No. S-182) under the Revised Development Plan dated 10/09/2001. The Petitioner submitted its explanation on 29/03/2023 with supporting documents including

Government Resolution dated 17/07/2007, Scrutiny Form dated 24/02/2015, and Chart showing lifting of reservations, yet without affording an opportunity of hearing, Respondent No. 3 issued the impugned Communication dated 05/06/2023 reiterating the reservation. The Petitioner thereafter sought information under the RTI Act on 28/07/2023. It is pertinent that a Note-Sheet dated 02/03/2015 of the Nagpur Improvement Trust records that reservation was to be maintained only over open land and not upon constructed portions. Thus, the Petitioner is challenging the impugned Communications dated 24/03/2023 and 05/06/2023 issued by Respondent No.3.

5. The learned Counsel for the Petitioner relied on the following citations :

- (i) ***Writ Petition No.7439/2017, Kailassinh Chandansinh Chowhan and others Vs. State of Maharashtra and others, decided on 11/06/2019;***
- (ii) ***Writ Petition No. 5636/2016, Shri Sanjay S/o Balkrushnarao Mule and others Vs. Nagpur Improvement Trust, Nagpur and another, decided on 01/07/2019.***

6. It is submitted by the Respondent No.1 that no specific relief has been claimed against the answering respondent. The execution of lease deed, as prayed, falls exclusively within the domain of Respondent Nos. 2 to 4. It is further submitted that as per the reply filed by Respondent Nos. 2 to 4, the Petitioner had applied for regularization of allotment under the Gunthewari Act.

7. This Court, vide order dated 27/03/2025 in Writ Petition No. 237/2023, has directed the Nagpur Improvement Trust not to regularize any plots carved out from open spaces or areas reserved for public utility, either under the Gunthewari Act or otherwise, until further orders.

8. In view of the above, the reliefs sought by the Petitioner are untenable and the petition, as against the answering respondent, is liable to be dismissed.

9. It is contended by the Respondent Nos.2, 3 and 4 that the land was acquired under the Sakkardara Street Scheme and possession was taken by NIT in 1982. The layout was approved by Government Resolution dated 17/07/2007

and later regularized on 26/09/2011. Certain plots were reserved for Higher Education, and this reservation was deleted in 2015 only for plots with existing construction.

10. The Petitioner applied for regularization under Gunthewari, paid the required charges, and Plots 19A to 19D were allotted on 25/11/2022 with possession delivered on 30/11/2022. However, when asked to submit documents showing deletion of reservation, the Petitioner failed to do so and instead filed general resolutions that do not establish deletion from the Development Plan.

11. Furthermore, the letter dated 05/06/2023, NIT rightly informed the Petitioner that Plots 19A to 19D remain reserved for Higher Education. Since only 20 built-up plots were de-reserved and these plots are not included, the Petitioner has no right to claim execution of lease deeds.

12. The learned Counsel for the Respondent Nos.2, 3 and 4 relied on the Judgment in *Manish through constituted attorney Prashant Balwantrao Tekade Vs. State of Maharashtra and others*, reported in 2012 SCC OnLine Bom

415 with other connected matters.

13. Heard both the parties as length. Perused the documents placed on record and considered the citations relied on by both the parties.

14. It is contended by the Petitioner that once the plots were regularized by applying Gunthewari Act, the reservation gets automatically lifted. For the sake of convenience Section 5 of the Gunthewari Act reproduced as under :

“5. Consequences of regularisation. – (1) Notwithstanding anything contained in any other law for the time being in force, on being regularised, the Gunthewari development shall be deemed to have been exempted under section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 from the provisions of Chapter III of the said Act and converted to non-agricultural use for all purposes of the Maharashtra Land Revenue Code, 1966, subject to the payment of non-agricultural assessment and the other terms and conditions of such conversion and the provisions of the Development Plan or the Regional Plan, as the case may be, shall, so far as such development is concerned, stand modified or relaxed, as may be required.

(2) On such regularisation of Gunthewari development under section 3, by the concerned Planning Authority, all court cases or other proceedings, filed by such Planning Authority, and pending in any court in so far as they relate to such unauthorised development, shall abate."

15. The Petitioner Society carved out a residential layout over the field Survey No.52 and 54 of Mouza Bidipeth within a limit of Nagpur Improvement Trust and Nagpur Municipal Corporation. The Petitioner Society decided to retain Plot Nos.19A, 19B, 19C and 19D, total admeasuring 11,500 Sq.Ft. Accordingly, plots came to be allotted. On 30/04/2001, Gunthewari Act came into effect. The Petitioner applied for regularization of said plots Nos.19A to 19D. On 04/11/2016, as per Demand Note, the Petitioner paid regularization charges and charges for removal of reservation with respect to its plots. The Petitioner also applied for amalgamation of Plot Nos.19A to 19D and also paid amalgamation charges. The Respondent No.4 issued an amalgamation letter dated 23/11/2022 along with approved Map of Amalgamation. The Respondent No.2 NIT issued an allotment letter on 28/11/2022 and handed over the

possession of plot Nos.19A to 19D to the Petitioner in the capacity as a lessee. Plots were also regularized as per Communication dated 28/11/2022 (Annexure G).

16. Thereafter, on 24/03/2023, the Deputy Director of Town Planning intimated that the plots are under the reservation. It is informed that the plots are reserved for proposed 'Higher Education (Reservation No.S-182)'. The Authorities were directed to the Petitioner to bring the documents if any about the reservation. The Petitioner gave reply to the said communication dated 24/03/2023. By the said reply, it was pointed out that Sakkardara Street Scheme was cancelled and therefore, Khasra Nos.52 and 54 owned by the Gousiya Labour Co-operative Housing Society was released from reservation. It is also brought to the notice of Deputy Director of Town Planning that Khasra Nos.52 and 54 owned by the Petitioner were sanctioned under Gunthewari Act. In the said sanctioned Map having seal and signature of the Deputy Director of Town Planning Authority. In the said Map, there is no reservation on the plots of 19A to 19D.

Therefore, Demand Note issued by the Nagpur Improvement Trust of the amount of Rs.7,28,320/- and Demand Draft are already deposited for removal of reservation and for regularization. The plots were amalgamated, that amount was also deposited.

17. It is also brought to the notice of the Deputy Director of Town Planning that total reservation was cancelled as there were houses on the said plots, which are constructed long back in the year 1998 and, therefore, requested to grant lease. There was need to pass the Gunthewari Act for regularization and upgradation of certain Gunthewari development and for the control of Gunthewari development. Gunthewari development under the Act includes the plots formed by unauthorizedly sub-dividing privately owned land with buildings. Thus, the land developed unauthorizedly and even if there are buildings on it, for regularization of the same, the said Act was came into existence. Section 5 as reproduced above clearly prescribed that notwithstanding anything contained in any other law for

the time being in force, **on being regularized**, the Gunthewari development shall be deemed to have been exempted under section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 from the provisions of Chapter III of the said Act and converted to non-agricultural use for all purposes of the Maharashtra Land Revenue Code, 1966. It is also prescribed that the provisions of the Development Plan or the Regional Plan, as the case may be, shall, so far as such development is concerned, stand modified or relaxed, as may be required. It is also made clear that on regularization of Gunthewari development, all cases or proceedings pending in any Court in relation to unauthorized development shall abate.

18. Learned Counsel for the Petitioner placed reliance on Judgment in *Writ Petition No.7439/2017* (supra), wherein para 10 this Court held as under :

“10. If the regularization under the Gunthewari Act is granted in accordance with law, obviously any reservation in the development plan of the area occupied by such plots would not come in the way, as the development plan or regional plan, as the case may be, stands modified to that effect in terms of

sub-section [1] of Section 5 of the said Act”.

19. Learned Counsel for the Petitioner also placed reliance on Judgment in ***Writ Petition No.5636/2016*** (supra), wherein it is held as under :

“Our attention is invited by Shri Patil, the learned counsel appearing for the applicants/petitioners of the provisions of Sections 3, 5 and 20 of the Maharashtra Gunthewari Act to urge that the Chairman of the Nagpur Improvement Trust is conferred with the power of the Planning Authority for the purposes of the said Act and the steps can be taken under it to delete the reservation. It is further urged that several steps were taken to delete the reservation and in fact such deletion was recommended, but there was no final decision taken under Section 5 of the said Act by the Chairman of the Nagpur Improvement Trust”.

20. Learned Counsel for the Respondents placed reliance on ***Manish through constituted attorney Prashant Balwantrao Tekade*** (supra), wherein in para 30 held as under :

“30. building construction cannot be continued after the Government declared its intention to prepare a development plan for any

area, unless permission is obtained under MRTP Act. It is held that this permission is required to be separately obtained and any construction without such permission is illegal. The conclusion drawn is neither perverse nor erroneous. Primacy given to MRTP Act in field of development by the Legislature is thus evident. Gunthewari Act carves out an exception to this general law. Section 5 of Gunthewari Act makes room for a very limited deeming fiction in relation to Gunthewari development. It does not equate such gunthewari development after its regularization, with development under MRTP Act. It only arrests application of those stipulations in development plan or regional development plan which otherwise would have warranted demolition of that illegal gunthewari development. Lands in adjacent fields in which plots were not laid prior to 01.01.2001 continue under same restraint and those stipulations in development plan or regional development plan which stand relaxed for gunthewari development, prohibit any such activity on this adjacent field. Legislature has intentionally not made any provision in Gunthewari Act to treat such regularized gunthewari development as legal development under MRTP Act. Gunthewari Act does not affect the scheme of its Section 156 at all. This deliberate omission by the State Legislature in 2001 Act cannot be overlooked. Gunthewari Act regularizes only certain otherwise illegal developments in larger public interest and simultaneously provides for stern action not only against violators but also against public officers,

if they permit such illegalities. Provisions for up-gradation of such regularized gunthewari developments are also made to ameliorate the situation prevailing there”.

However, facts in judgment are distinguishable.

Question before the Court was after regularisation whether Petitioner is entitled for loading TDR which was refused by the Authorities. This Court fortified the refusal to load TDR and held that it is neither illegal nor unconstitutional.

21. It needs to be noted here that in 2014 Section 156 of the MRTP Act came to be amended and proviso is added which reads as under :

“Section 156. Effect of laws :

Notwithstanding anything contained in any law for the time being in force -

(a)

(b) *when permission for such development has not been obtained under this Act, such development shall not be deemed to be lawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has been obtained:*

Provided that, the development which has

been duly permitted or deemed to have been permitted by the concerned Village Panchayat within the area of the gaathan or the gunthewari development which has been regularized in accordance with the provisions of the Maharashtra Gunthewari Developments (Regularisation, Upgradation and Control) Act, 2001, shall not be treated as unauthorised development under this Act."

22. In view of the fact that already plots were regularized under the Gunthewari and Demand Note also issued and even Demand Draft issued in favour of NIT and amount was deposited, there is no reason to withhold the lease. This fact is also admitted in reply filed on behalf of Respondent Nos.2, 3 and 4 that Demand Note for the subjected plots has been given as the reservation was deleted in accordance with the open-built-up site report earmarked on Regularized layout Plan. It is also accepted that being the award passed, category of possession taken layout was sent to Government for regularization under Gunthewari and approval of Government was received to regularize the layout as per the provisions of Gunthewari and as per the approval dated 17/07/2007.

23. So far as order dated 27/03/2025 in Writ Petition No. 23 of 2023, by which it was directed that the Nagpur Improvement Trust not to regularize any plots carved out from open spaces or areas reserved for public utility either under Gunthewari Act or otherwise until further orders is concerned, it is not applicable in the present set of facts, as the plots were regularized already before passing of the order.

24. In view of this clear admission, admittedly, the Respondent NIT has received amount towards regularization as well as removal of reservation. In view of Section 5 of Gunthewari Act, after regularization, there is no question of any reservation would arise. As such, the impugned order needs to be set aside. Accordingly, we pass the following order :

- (i) The Writ Petition is allowed.
- (ii) The impugned Communication dated 05/06/2023, issued by Respondent No.3 – Deputy Director of Town Planning, Nagpur Improvement Trust, Nagpur is hereby quashed and set aside.

- (iii) The Respondents Authorities are hereby directed to execute a Lease-deed with respect to Plots Nos.19A to 19D in Khasra Nos.52 and 54 of Mouza Bidipeth in favour of the Petitioner Society in accordance with law within a period of four weeks.

The Writ Petition stands disposed of in the above terms. No order as to costs.

(PRAVIN S. PATIL, J.)

(SMT. M.S. JAWALKAR, J.)

Kirtak