

A NAGPUR METRO RAIL CORPORATION LIMITED

v.

ORBIT MOTELS AND INNS PRIVATE LIMITED, NAGPUR &
ORS.

B (Civil Appeal No. 8582 of 2022)

DECEMBER 06, 2022

[M. R. SHAH AND M. M. SUNDRESH, JJ.]

- Public property – Termination of lease – Allotment for public need and larger public interest – In the instant case, private respondent was the sub-lessee of the Tourism Corporation, who was the lessee of the Public Works Department of the State of Maharashtra – The lease was subject to the right of requisition and consequent termination of the lease by the State of Maharashtra, in case, land in question was required for public purpose, without any right to the Tourism Corporation as well as the lessee to challenge such intention of the Government of Maharashtra – Thereafter the lease granted to the Tourism Corporation was terminated in pursuance of the order of the State citing public interest involving Nagpur Metro Rail Project and the allotment was made to appellant-Nagpur Metro Rail Corporation – The private respondent (sub-lessee) challenged the termination of lease before the High Court – High Court allowed the writ petition holding that appellant took over the possession forcibly and highhandedly by entering into the premises and, therefore, the same was arbitrary and illegal – Hence instant appeal – Held: Pursuant to the order of the State, the appellant was given occupation and possession of the land in question, and the allotment order itself was not challenged, therefore, the appellant cannot be said to be in illegal possession – Also the lease granted to the respondent was terminated and the fact of said termination is in question in a civil suit (pending) and hence his right is not clear – Further the allotment to the Corporation was made considering the public need and larger public interest and since the same was not challenged hence High Court erred in allowing the petition.*

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Allowing the appeal, the Court

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HELD: 1. Pursuant to the allotment order dated 25.08.2015 by the Collector, the land in question has been allotted to the appellant for a public purpose namely, Nagpur Metro Rail Project. Pursuant to the said allotment order, the appellant has been in occupation and possession of the land in question, which is being used by the appellant for railway project. The order of allotment dated 25.08.2015 has not been challenged at all by the original writ petitioner-respondent No. 1. Therefore, as such, when the appellant is allottee of the land in question and is in occupation and possession of the allotted land, which is being used for a public purpose, i.e., Nagpur Metro Rail Project, the appellant cannot be said to be in illegal possession. Therefore, as such, the High Court has materially erred in holding that the appellant is in illegal possession and occupation of the land in question. [Para 6][658-F-H; 659-A-B]

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2. Even otherwise, the High Court ought not to have entertained the writ petition preferred by respondent No.1 considering the fact that there was a cloud over the title of the respondent No.1. Respondent No. 1 claimed the right as a lessee pursuant to the registered Lease Deed dated 17.07.1995. However, the lease in favour of the respondent No. 1-original writ petitioner has been terminated by notice dated 27.05.2002. The termination of the lease is the subject matter of Civil Suit No. 413 of 2002 filed by the respondent No.1 against respondent No.3. Neither any interim relief / order had been prayed nor there was an interim relief in favour of respondent No. 1 in the pending suit. In the meantime, considering the public need and in the larger public interest, the land in question is allotted to the Metro for Nagpur Metro Rail Project. [Para 6.1][659-B-D]

3. Even otherwise, in view of the disputed question of facts that whether the actual possession was taken over or not and / or whether the appellant was handed over the possession rightly or not, the High Court ought not to have passed the impugned judgment and order and ought not to have issued the impugned directions in exercise of the powers under Article 226 of the Constitution of India. If respondent No.1 succeeds in the suit

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- A filed by him, in that case, it may claim the compensation, but unless and until its rights are crystallised in a pending suit, a public project cannot be stalled. The allotment order dated 25.08.2015 and the possession handed over to the appellant pursuant to the said allotment cannot be said to be per se illegal. Under the circumstances, the impugned judgment and order passed by the High Court is unsustainable. [Para 6.2][659-F-H]
- B CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8582 of 2022.

- C From the Judgment and Order dated 16.09.2016 of the High Court of Judicature at Bombay, Bench at Nagpur in Writ Petition No. 6581 of 2015.

K. V. Viswanathan, S.K. Mishra, Sr. Advs., Kaustubh Deogade, Satyajit A. Desai, Amit Kumar Pathak, Satya Kam Sharma, Gajanan N. Tirthkar, Abhinav Mutyalwar, Siddharth Gautam, Ms. Anagha S. Desai, Advs. for the Appellant.

- D Kapil Sibal, Sr Adv., Aniruddha Joshi, Ms. Manisha Singh, Nizam Pasha, Ms. Shwetal Shepal, Chander Shekhar Ashri, Sachin Patil, Anis R. Shah, Brij Kumar Shah, Adarsh Kumar Pandey, Ms. Shivani Rautela, Ms. Apurva, Satayam Singh, Shivaji M. Jadhav, M/s S. Jadhav and Company, Anand Dilip Landge, Siddharth Dharmadhikari, Aaditya A. E Pandey, Avineesh Jha, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

- F 1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Judicature at Bombay Bench at Nagpur in Writ Petition (C) No. 6581 of 2015 by which the High Court has allowed the said writ petition preferred by the private respondent herein – original writ petitioner and has directed the appellant – Nagpur Metro Rail Corporation Limited (hereinafter referred to as “Metro”) to remove itself from the property in question and hand over the possession of the same to the original writ petitioner by holding that the action on the part of the appellant - Metro of forcibly and highhandedly entering into the premises of the appellant and forcibly securing the possession of the same is arbitrary and illegal, the original respondent No. 1 – Metro has preferred the present appeal.
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2. Area admeasuring 9343 square meters, bearing Survey No. 169, City Survey No. 1864 of Mouza Sitabuldi, District Nagpur was owned by the Public Works Department of the State of Maharashtra. A lease was executed in favour of the Maharashtra Tourism Development Corporation Limited (hereinafter referred to as "Tourism Corporation") with respect to the subject land. That the land was sub-leased by the Tourism Corporation to the respondent No. 1 herein – original writ petitioner on 17.07.1995 for a period of 30 years. The said lease was subject to the right of requisition and consequent termination of the lease by the State of Maharashtra, in case, land in question was required for public purpose, without any right to the Tourism Corporation as well as the lessee to challenge such intention of the Government of Maharashtra.

2.1 It appears that in the year 2002, the Tourism Corporation vide letter dated 27.05.2002 terminated the lease dated 17.07.1995. The respondent No. 1 – original writ petitioner filed a Special Civil Suit No. 413 of 2002 against the Tourism Corporation for declaration and permanent injunction, which is reported to be pending in the Court of Civil Judge, Senior Division, Nagpur. It is reported that currently the said suit is at the stage of evidence.

2.2 It appears that the Tourism Corporation also initiated in the year 2004, the proceeding under Sections 5(1) and (2) of the Bombay Government Premises (Eviction) Act, 1995 against the respondent No. 1 herein – original writ petitioner seeking recovery of dues and peaceful possession of the land and structure erected thereon. However, it appears that the said proceedings came to be withdrawn stating settlement.

2.3 It appears that thereafter the Government of India conveyed its approval for the implementation of the Nagpur Metro Rail Project. The appellant herein – Nagpur Metro Rail Corporation Limited was to function as a special purpose vehicle for the implementation of the project, the legal framework of the project was to be as per the Metro Railways (Construction of Works) Act, 1978. Thus, the appellant herein - Metro came into existence. That thereafter, the Government resolution dated 01.06.2015 came to be issued by the Government of State of Maharashtra detailing the scope of "advance possession" and describing its necessity. The advance possession would mean possession that is delivered to an authority for a project for public purpose without completing the formality

- A of actual permission. It appears that in order to implement the project in public interest, the project being the prestigious project of the city of Nagpur, and as the appellant was in need of the land, the appellant vide communication dated 27.07.2015 requested the State of Maharashtra for the Development of the Metro Rail Project as there was no land in the vicinity.
- B 2.4 The Collector vide order dated 25.08.2015 considering the request of the appellant allotted the land in question admeasuring 9343 square meters. The Collector considered the resolution dated 30.01.2014 by which the State Government gave sanction and the approval dated 21.08.2014 was given by the Central Government to the Nagpur Metro Rail Project. At this stage, it is required to be noted that the order dated 25.08.2015 categorically mentioned that the allotment is subject to the outcome of the Civil Suit No. 413 of 2002. In consonance with the order dated 25.08.2015 passed by the Collector, the possession of the aforesaid land was handed over by the Senior Regional Manager
- C of the Tourism Corporation to the representative of the Collector, Nagpur (City) and accordingly the possession of 7495 sq. mtrs. was, thus, taken over from the respondent No. 1 and handed over to the appellant on 26.08.2015.
- D 2.5 That the respondent No. 1 – original writ petitioner, a lessee,
- E whose lease was already terminated in the year 2002 filed a Writ Petition No. 6581 of 2015 against the Metro; District Collector; Tourism Corporation and the State of Maharashtra before the High Court challenging the action of the Metro in securing possession of the land in question. Vide order dated 08.12.2015, the High Court issued a notice in the writ petition and passed ad-interim order of status quo. The
- F Tourism Corporation filed reply to the writ petition and submitted that the order dated 25.08.2015 passed by the Collector is perfectly legal and in view of the said order the possession of the land was handed over to the appellant - Metro. Maintainability of the writ petition was also raised.
- G 2.6 The appellant - Metro also filed its reply to the writ petition and submitted that the Collector has allotted the land in question to the appellant vide order dated 25.08.2015 and the possession of the said land was also handed over to the appellant on 26.08.2015. It was submitted that therefore, it cannot be said that Metro has forcibly entered the land.
- H It was submitted that the Metro was legally put in possession.

2.7 The writ petition was also opposed by the District Collector. A counter was filed on behalf of the Collector also. It was submitted that the land in question belonged to the Public Works Department of the State of Maharashtra and in the year 1992, the land was leased to the Tourism Corporation and the Tourism Corporation had subsequently further sub-leased to the respondent No. 1 herein – original writ petitioner – lessee. It was submitted that thereafter the lease in favour of the respondent No. 1 – original writ petitioner was terminated, which was the subject matter of the suit. It was submitted that in order to execute the Nagpur Metro Rail Project order dated 25.08.2015, the District Collector transferred the land to the appellant subject to the outcome of the Civil Suit No. 413 of 2002 filed by the respondent No. 1 – original writ petitioner. It was submitted that the Tourism Corporation and the Sub-Divisional Officer handed over the advance possession to the appellant on 26.08.2015.

2.8 By the impugned judgment and order, the High Court has allowed the said writ petition and has directed the appellant - Metro to hand over the possession of the land in question to the respondent No. 1 – original writ petitioner and the appellant – Metro has been restrained from dispossessing the respondent No. 1. The impugned judgment and order passed by the High Court is the subject matter of present appeal.

2.9 By the interim order dated 30.09.2016, this Court has stayed the operation of the impugned judgment and order passed by the High Court. That thereafter the land in question is being used by the appellant – Metro for Nagpur Metro Rail Project. That is where the matter stands.

3. Shri K.V. Viswanathan, learned senior counsel appearing on behalf of the Metro has made the following submissions in support of his prayer to quash and set aside the impugned judgment and order passed by the High Court:-

- (i) That the Hon'ble High Court has erred in maintaining the writ petition under Article 226 of the Constitution of India. It is submitted that the Hon'ble High Court has misinterpreted the provision of Section 39 of the Metro Railways (Construction of Works) Act, 1978 by holding that the jurisdiction of the Civil Court is barred and therefore a Civil Suit could not have been instituted. It is submitted that

- A the bar of Civil Suit will only apply in cases wherein there is adequate remedy or forum provided under the Act and not otherwise. In the alternative, it is submitted that Section 39 uses the words – “no suit or application for injunction shall lie in any court against the Central Government or Metro.....” The bar is on injunction and not on filing declaration suit for confirming clear title over property. It is submitted that injunction is only the consequential or ancillary relief to declaration. Therefore, only when the title to land is clear and established beyond doubt by declaration, and then there is dispossession by the Metro authorities (in which circumstances suit for injunction would be filed) the bar under Section 39 would operate. It is submitted that in the present case, the respondent No. 1’s title was unclear and the suit was pending at the instance of respondent No. 1. It is submitted that it is an established principle of law that when there is a cloud over the title, a suit for mere injunction is not maintainable and it is imperative to file a suit for declaration.;
- (ii) That there were disputed questions of facts on the issue of possession and whether it was taken in accordance with law as raised in the writ petitioner and therefore this could not have been adjudicated by the High Court in the writ petition.
- (iii) That there was a cloud over the title of the respondent No. 1 – original writ petitioner - respondent No. 1; the respondent No. 1 was a sub-lessee, whose lease already stood terminated by the Government; no interim relief was sought for and no interim order was passed. In fact, the allotment order dated 25.08.2015 clearly stated that the allotment was subject to the outcome of the Civil Suit No. 413 of 2002 filed by the respondent No. 1, currently, which is still pending. It is submitted that unless and until the respondent No. 1 succeeds in Civil Suit, it had no right to challenge the acquisition and/or action of the Metro and in fact the Metro is in possession pursuant to the order passed by the Government dated 25.08.2015.
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- (iv) It is submitted that even the allotment order dated 25.08.2015 by which the land had been allotted to the appellant had not been challenged. Therefore, by way of operation of principle of waiver, the respondent No. 1 is not entitled to question the handing over of possession to the appellant, which is only pursuant to the aforesaid order dated 25.08.2015, which is virtually a declaratory relief. A
- (v) It is further submitted that as such the land in question, which originally was leased to the respondent No. 1, whose lease has been terminated, for which the Civil Suit is pending, has been used by the Metro for a public purpose namely Nagpur Metro Rail Project. That there is no alternate space available for the appellant to the land in question as on one side there is a heritage structure – Kasturchand Park and on the other side there is RBI. Therefore, for building of the station, there is only the vacant subject land which is needed for the metro station. It is submitted that without the said land, the Metro Project will come to halt and will be stranded as the funding for the project is already tied up and project would be seriously affected if the work is to be stopped. B

4. Present appeal is vehemently opposed by Shri Kapil Sibal, E learned senior counsel appearing on behalf of respondent No. 1.

4.1 It is submitted that there was a registered deed of lease dated 17.07.1995 in favour of the respondent No. 1. The respondent No. 3 herein transferred in favour of respondent No. 1 herein by way of lease, the entire land in question for a period of 30 years for the purpose of constructing the hotel complex. It is submitted that since the execution of the lease deed dated 17.07.1995, the appellant is continuously, uninterruptedly, and lawfully in actual physical and peaceful use, occupation and possession of the entire land in question. That the respondent No. 1 had deposited with respondent No. 3 the annual rent at the rate of Rs. 96,250/- in accordance with terms of the lease deed. F

4.2 It is submitted that suddenly on 27.05.2002, the respondent No. 3 herein, issued a notice, terminating the lease, contrary to the terms and conditions of the lease deed. That by the said notice, the respondent No. 3 herein threatened to resume the possession of the land together G

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- A with structures thereon on 12.06.2002, the respondent No. 1 herein therefore immediately challenged the said illegal and arbitrary act on the part of the respondent No. 3 by filing Civil Suit No. 413 of 2002 against the respondent No. 3 herein for a declaration and permanent injunction, which is pending adjudication. It is submitted that the actual physical and lawful possession of the suit property continues to be with the respondent No. 1 herein. It is submitted that in that view of the matter, the peaceful possession of the respondent No. 1 herein could not have been disturbed or interfered with without following the due process of law.
- B 4.3 It is submitted that the action on the part of respondent No. 2 herein of handing over the advance paper (symbolic / token) possession of the property to the appellant herein and the action on the part of the appellant herein now forcibly entering into the suit property by breaking the eastern side compound wall of the suit property and encroaching upon about 3000 square feet of land of the property is patently arbitrary, illegal, improper and high handed and therefore, the Hon'ble High Court
- C has rightly allowed the writ petition and rightly declared that the action on the part of the appellant herein – Metro is arbitrary and illegal. It is submitted that therefore the Hon'ble High Court has rightly passed a further order directing the appellant – Metro to remove itself from the property and hand over the possession of the same to the respondent No. 1 – original writ petitioner. It is submitted that the Hon'ble High Court has rightly restrained the appellant and others from dispossessing the original writ petitioner without following the due process of law. It is submitted that the impugned judgment and order passed by the High Court is absolutely legal, just and proper, which is not required to be interfered with by this Court.
- F 5. Heard the leaned senior counsel appearing on behalf of the parties at length.
- G 6. At the outset, it is required to be noted that pursuant to the allotment order dated 25.08.2015 by the Collector, the land in question has been allotted to the appellant for a public purpose namely, Nagpur Metro Rail Project. Pursuant to the said allotment order, the appellant has been in occupation and possession of the land in question, which is being used by the appellant for railway project. The order of allotment dated 25.08.2015 has not been challenged at all by the original writ petitioner – respondent No. 1 herein. Therefore, as such, when the H appellant is allottee of the land in question pursuant to the allotment

order dated 25.08.2015 and is in occupation and possession of the allotted land, which is being used for a public purpose, i.e., Nagpur Metro Rail Project, the appellant cannot be said to be in illegal possession. Therefore, as such, the High Court has materially erred in observing and holding that the appellant is in illegal possession and occupation of the land in question.

6.1 Even otherwise, the High Court ought not to have entertained the writ petition preferred by the respondent No. 1 herein considering the fact that there was a cloud over the title of the respondent No. 1. It is required to be noted that the respondent No. 1 claimed the right as a lessee pursuant to the registered Lease Deed dated 17.07.1995. However, the lease in favour of the respondent No. 1 – original writ petitioner has been terminated by notice dated 27.05.2002. The termination of the lease is the subject matter of Civil Suit No. 413 of 2002 filed by the respondent No. 1 against respondent No. 3 herein. Neither any interim relief / order had been prayed nor there was an interim relief in favour of the respondent No. 1 in the pending suit. In the meantime, considering the public need and in the larger public interest, the land in question is allotted to the Metro for Nagpur Metro Rail Project.

At the cost of repetition, it is observed that the allotment dated 25.08.2015 is not under challenge and the same has not been challenged at all. Therefore, unless and until, the rights of the original writ petitioner in the land in question are established, which shall be decided in the Civil Suit which is pending, the writ petition filed by the original writ petitioner could not have been entertained by the High Court.

6.2 Even otherwise, in view of the disputed question of facts that whether the actual possession was taken over or not and / or whether the appellant herein was handed over the possession rightly or not, the High Court ought not to have passed the impugned judgment and order and ought not to have issued the impugned directions in exercise of the powers under Article 226 of the Constitution of India. At this stage, it is required to be noted that if the respondent No. 1 succeeds in the suit filed by him, in that case, it may claim the compensation, but unless and until its rights are crystallised in a pending suit, a public project cannot be stalled. The allotment order dated 25.08.2015 and the possession handed over to the appellant pursuant to the said allotment cannot be said to be per se illegal. Under the circumstances, the impugned judgment and order passed by the High Court is unsustainable.

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- A 7. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order passed by the High Court is hereby quashed and set aside. The original writ petition filed by the respondent No. 1 herein stands dismissed. However, Civil Suit No. 413 of 2002 pending before the competent Civil Court be decided and disposed of in accordance with law and on its own merits as the same is not the subject matter of present litigation.

Present appeal is allowed accordingly. No costs.

Pending application, if any, also stands disposed of.

Devika Gujral
(Assisted by : Mahendra Yadav, LCRA)

Appeal allowed