

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 736 OF 2015

Santosh Udhasingh Thakur ...PETITIONER

versus

Jeevan Kondia Kadane and others ...RESPONDENTS

.....
Mr. V.D. Gunale, Advocate for Petitioner
Mr. S.S. Manale, Advocate for respondent No. 1
Mr. A.V. Hon, Advocate for respondent No. 2.
.....

CORAM : SUNIL P. DESHMUKH, J.

DATED : 16th SEPTEMBER, 2015

Order :-

1. Learned counsel for petitioner contends that respondent No. 1 is in unauthorized occupation of the premises belonging to the Municipal Corporation, Latur. Under an activity which is not legal, respondent No.1, purportedly has got grant of lease which is not referable to any of the provisions of relevant enactment. He refers to order dated 24-09-2013 passed by the Division Bench of this Court in writ petition No. 8941 of 2012, wherein division bench has observed that -

“7. We have perused the record. After hearing respective Counsel, we find that several disputed questions arise. The petitioners want to rely upon document not on record to show that even after election of respondent No. 3 in 2012, some wrongful activity has been

undertaken on the suit plot. We have not permitted the petitioners to rely upon said document as the respondents to not have any opportunity in relation thereto.

8. In this situation, we find that interest of justice can be met with, by permitting the petitioners to move an application complete in all respect, before the Municipal Commissioner or other appropriate forum, in accordance with law. If such application is moved, said authority shall attempt to look into it, in accordance with law, after giving necessary opportunity to all concerned, within a period of four months from the date of such application. With this liberty to the petitioners and keeping all rival contentions open, we dispose of the petition. No costs.”

2. Thereafter, it appears that Municipal Corporation came to be moved and accordingly notice purportedly referable to section 81-B of the Maharashtra Municipal Corporations Act, 1949 (hereinafter referred to as “MC Act”) had been issued, against which proceedings have been filed before the District Judge, which are pending.

3. During pendency of the matter before the District Judge, application for interim relief seeking stay to the eviction had been moved and that application came to be granted subject to certain conditions. While passing said order the District Judge has observed thus-

“10. Admittedly the impugned order of eviction is passed by the respondent No. 1 under Section 81(B) of the Maharashtra Municipal Corporations Act, holding that though the appellant has been occupying the suit property pursuant to the resolution No. 38,

Dt. 15.3.1993 passed by the then Municipal Council, Latur, no sanction is granted by the Government for giving the suit property on lease to the appellant as per said resolution. In the circumstances, it is observed that provisions of Section 92 of the Maharashtra Municipal Corporations Act, is not observed. In the circumstances, the appellant is held to be unauthorised occupant of the suit property and is ordered to be evicted.

11. The appellant is claiming use, occupation and possession of the suit property since the time of his mother when she was employed as a peon. In the said regard, he has placed reliance on the certificate, Dt. 28.12.1967, issued by the then Head Master of Zilla Parishad, Central Primary Vidhya Mandir, Latur. Subsequent to that as per resolution No. 38, Dt. 15.3.1993, the very suit property said to have been allotted to the appellant on leasehold basis. Admittedly, requisite Government Permission is not on record.

12. But that apart, the learned advocate for the respondents have heavily placed reliance on the provisions of Section 92 of the Maharashtra Municipal Corporations Act. This is the provision regarding transfer of municipal property and sub-section (1) specifically lays down that no Municipal Council shall transfer any of its property without sanction of the State Government. They have invited my attention to the provisions of Section 79 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 which deals with the provisions governing the disposal of municipal property.

13. Considering the rival facts on record, it appears that various legal aspects have been raised. On fact is clear that the appellant is in long standing use, occupation and possession of the suit property.

His entry in the suit property can be said to be lawful. However, whether he can be held to be unauthorized occupant of the suit property, will have to be considered depending upon various contentions raised by the appellant on the basis of certain documents. The said factual and legal aspect is required to be considered in the appeal.

14. In the circumstances, refusing to grant stay to the impugned is likely to cause substantial loss to the appellant and filing of appeal itself is likely to be frustrated. The appeal is already admitted. The rights and liabilities of the parties will have to be considered on factual and legal aspect. Ad-interim stay is already granted by order Dt. 18.8.2014. Same is required to be confirmed.”

4. Having regard to the facts and circumstances and indisputable position that respondent No. 1 appears to be in possession since 1979 continuously and the observations of the division bench as well as District Judge as referred to hereinabove. The position emerges from the impugned order that the order has been passed on considerations which are germane and not extraneous to the matter and for that matter the observations cannot be said to be perverse. I do not deem it appropriate to consider that this is a case wherein discretionary powers of this court are required to be exercised.

5. In view of the same. Writ petition stands rejected. However, it is open for the petitioner to request the authority for expeditious disposal of the matter. Needless to refer to that respondent No. 1 is also under obligation to follow the orders passed by this court about creation of third party interest or restraint under impugned order. The

observations in this order, however, are only interim in nature and do not reflect on merits of the case. The authority to consider the matter independently without getting influenced by this order.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK