

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1525 OF 2015

Shri. Ravishankar Rajballi and another .. Petitioners

Versus

The Nashik Municipal Corporation and another .. Respondents

Mr. M. V. Holamgi, for the Petitioners.

CORAM : R.M. SAVANT, J.

DATE : 17th FEBRUARY, 2015

PC.

1. There is a concurrent finding recorded by the Courts below against the Petitioners/original Plaintiffs as regards their entitlement to the discretionary relief of temporary injunction. Both the Courts below on the basis of the facts which were before them as also the material on record have come to a conclusion that discretion cannot be exercised in favour of the Plaintiffs. The land in question on which the Plaintiffs have their structure is land bearing Survey No.88/5 which is an agricultural land and is shown in the Green Zone. The Plaintiffs i.e. Petitioners herein claim to have been purchased about 200 sq.mtr. out of the said Survey No.88/5 which totally admeasures 23 Ares. The case of the Plaintiffs that the structure was existing prior to their purchase in the year 2000 has been disbelieved by the Courts below on the ground that except

mentioning of the said fact in the Sale Deed, there is no corroborative evidence produced by the Plaintiffs as existence of the structure prior to the purchase. Both the Courts below have also refused to exercise discretion in favour of the Plaintiffs on the ground that land being agricultural land, unless the Plaintiffs were agriculturists they could not have purchased the said land without permission of the competent authority and no such permission has been produced by the Plaintiffs. The documents on record at the highest show that the taxes were paid by the Plaintiffs from the year 2002 and however the same would not lend credence to the legality of the structure. The record does not disclose that the Plaintiffs have produced any material to show as regards the pre-existence of the structure and the structure has been put up with the permission of any competent authority. In that view of the matter, the refusal of the Courts below to exercise discretion cannot be found fault with. No case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]