

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6742 OF 2014

Sukhdeo Shankar Pawar & Ors. .. Petitioners
vs.
The Nashik Municipal Corporation & Ors. .. Respondents

Mr. Anil Kumar Patil for Petitioners.
Mr. Vaibhav Patankar for Respondent Nos. 1 and 3.
Ms. Vaishali Nimbalkar – AGP for Respondent No. 4.

CORAM : M. S. SONAK, J.
DATE: 24 APRIL 2015

P.C. :-

- 1] **Not on board. Upon production, taken on board.**
- 2] This petition challenges the order dated 4 July 2014 by which the District Judge Nashik has dismissed the petitioners appeals against the order dated 2 April 2014 made by the Civil Judge, Senior Division, Nashik, on application below Exhibit '5' seeking temporary injunction against the Nashik Municipal Corporation from evicting the petitioners from the suit premises.
- 3] The two Courts, upon consideration of the material placed on record have held that in pursuance of the agreement, the petitioners were allowed to occupy the suit premises. Clause No. 11 of the

allotment letter, states that the Corporation by afford of third days notice, can require the petitioners to vacate the suit premises, where such premises are required by the Corporation for its purposes. There is material on record that necessary notice was issued to the petitioners requiring them to vacate the suit premises. There is also material on record that the suit premises are required by the Corporation for widening of road in view of the Kumbh Mela which takes place in Nashik.

4] The learned counsel for the petitioners however submitted that it is incumbent upon the Corporation to comply with the provisions contained in Section 81-B of the Maharashtra Municipal Corporation Act, 1949 (said Act) and that there has been no compliance in the present case.

5] In the present case, the petitioners, instituted the suits on the apprehension that they would be evicted from the suit premises. In this case, necessary notices in terms of the allotment letter, have been issued to the petitioners. The petitioners, have been granted period, in excess of thirty days to vacate. Clause 11 of the allotment letter indicates that the petitioners had agreed to vacate the premises as and when required by the Corporation for its purposes. The widening of the road for the purposes of Kumbh Mela is

certainly a purpose of the Corporation. In such circumstances, it is not possible to interfere with the two orders, which have declined any interim relief to the petitioners.

6] This is not a case where the petitioners can be said to have made out any *prima facie* case. Further, considering the purposes for which the Corporation requires the suit premises, it cannot be said that the balance of convenience is in favour of the petitioners.

7] In the case of *Wander Ltd. & Anr. vs. Antox India P. Ltd.*¹, the Hon'ble Apex Court has held that even an appeal against interlocutory order is an appeal on principle. Therefore, unless some perversity is demonstrated, ordinarily, it is not for the appeal court to interfere with the exercise of discretion by the trial Court. In the present case, both the trial Court as well as the appeal Court have exercised their discretion and declined any interim reliefs to the petitioners. In the facts and circumstances of the case, it cannot be said that the exercise of discretion is either vitiated by error of law or perversity. This petition is accordingly dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)