

ingale

IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8883 OF 2014

Sahebrao Vishwambar Waghmare .. Petitioner
Vs.
Grampanchayat Vairag .. Respondent

Mr.Priyal G.Sarda, Advocate for the Petitioner.

CORAM : R. G. KETKAR, J.

DATE : 30th JULY, 2015

P.C. :

. Heard Mr.Priyal G.Sarda, learned Counsel for the petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged the judgment and order dated 21/02/2014 passed by the learned District Judge, 3 Solapur in Civil Misc. Appeal No.24 of 2013 as also prayed for punishing respondent for disobedience of order dated 28/04/2010 passed by the learned trial Judge.

3. In support of this Petition, Mr.Sarda submitted that by order dated 28/04/2010, the learned trial Judge issued ad-interim injunction restraining the defendant from dispossessing the petitioner from the suit property without following due precess of law. Despite this order, on 03/05/2010, the petitioner was dispossessed. The learned trial Judge rejected the application on 21/10/2011. Aggrieved by that decision, petitioner preferred

appeal which was also dismissed on 21/02/2014. He submitted that as the injunction was operating against the defendant from 28/04/2010, the petitioner could not have been dispossessed without following due process of law. The petitioner was dispossessed on 03/05/2010. He, therefore, submitted that disobedience of order is required to be dealt with under Order 39 Rule 2A of Code of Civil Procedure, 1908 (for short 'C.P.C.') and further the impugned orders deserve to be set aside.

4. I have considered the submissions advanced by Mr.Sarda. I have also perused the material on record. It is not in dispute that on 24/04/2010, defendant had issued notice to the plaintiff. The plaintiff instituted Suit against the defendant and took out application Exhibit 5. On 28/04/2010, the learned trial Judge passed ad-interim order, operative part of it is as under :

“ Defendant is directed not to dispossess the applicant from the possession of suit property without following due process of law.

2. Applicant to follow the procedure of Order 39 Rule 3 of C.P.C.

3. E.P & S.B. allowed.

4. Returnable on 03.05.2010.”

5. Perusal of this order shows that defendant was directed not to dispossess the petitioner from the suit property **without following due process of law**. In my opinion, the defendant had already followed due process of law by issuing notice on 24/04/2010. It, therefore, cannot be said that dispossession of the

plaintiff on 03/05/2010 was without following due process of law. The learned trial Judge rejected the application filed by the plaintiff. In paragraph 8, the learned trial Judge observed that the defendant followed due process of law by following procedure laid down under Section 53(2) of the Maharashtra Village Panchayats Act (for short 'Act'). It was noted that petitioner is a member of gram panchayat and he was having knowledge about inclusion of his name in the list of persons who committed encroachment. Under Section 53(2) of the Act, gram panchayat has powers to remove the encroachment subject to obtaining permission from the District Collector. The District Collector had granted permission to remove the encroachment. The learned trial Judge accordingly rejected the application. Aggrieved by this decision, petitioner preferred appeal which was also dismissed by the learned District Judge. The learned District Judge observed in paragraph 9 that the defendant followed due process of law as contemplated by Section 53 of the Act.

6. In view thereof, I do not find that the Courts below committed any error in dismissing the application. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)