

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

WRIT PETITION STAMP NO.24523 OF 2015

Harishchandra Ramchandra Lahare and anr. : Petitioners
versus
Balaram Madhukar Chaudhary and ors. : Respondents.

Mr. S B Shetye for the Petitioners.
Mr. N R Bubna for the Respondent.

CORAM : R. M. SAVANT, J.
DATE : 08th September 2015

P.C.

1 There is a concurrent finding against the Petitioners as regards their entitlement to the discretionary relief of temporary injunction. Both the Courts below on the basis of the material on record have come to a conclusion that the Petitioners have not made out any case for the grant of the discretionary relief of temporary injunction.

2 The suit in question being Regular Civil Suit No.18 of 2015 was filed by the Petitioners – original Plaintiffs questioning the notice dated 06/11/2012 issued by the Respondent No.3 under Section 232 of the Maharashtra Municipal Corporation Act. The Plaintiffs have also sought other reliefs against the Defendants amongst whom is the Bhiwandi Nizampur City Municipal Corporation from demolishing the suit office and the bamboo shed therein. It is an undisputed position that the said notice dated 06/11/2012

came to be issued to the Plaintiffs which as indicated above is under Section 232 of the said Act. It seems that thereafter another notice came to be issued to the Plaintiffs on 18/10/2014 which was under Section 260 of the said Act calling upon the Plaintiffs to remove the unauthorized construction. It seems that to the notice dated 06/11/2012 the Plaintiffs filed their reply and the contentions raised in the reply was that the land in question comprising Survey No.13 was allotted to the Plaintiffs in view of the fact that some land was taken by the Municipal Corporation for the purpose of road widening on which land the Plaintiffs' structure was situated which resultantly came to be demolished.

3 In the said suit the Plaintiffs filed an application for temporary injunction for restraining the Municipal Corporation from taking action against the office premises and the shed. The said application was replied to on behalf of the Respondent No.3 i.e. the Municipal Corporation and the case of the Plaintiffs that they had been allotted the present land in lieu of taking over of the land for road widening purpose was disputed. The factum of the subsequent notice dated 18/10/2014 issued by the Municipal Corporation was also stated in the said reply.

4 The Trial Court considered the said application for temporary injunction and by its order dated 27/01/2015 rejected the said application. The Trial Court observed that the Plaintiffs have not placed any material to

support their case that the land in question was in fact allotted to them by the erstwhile Municipal Council in lieu of the land which has gone into road widening. The Trial Court, in so far as the notice dated 18/10/2014, receipt of which is disputed by the Plaintiffs, is concerned, adverted to the fact that the said notice was pasted on the conspicuous part of the premises and therefore it would have to be held that the said notice was served. The Trial Court also observed that the Competent Authority of the Municipal Corporation had passed an order directing the Plaintiffs to remove the construction which order was passed pursuant to the said notice dated 18/10/2014. The Trial Court on the basis that the Plaintiffs have not been able to produce any document to show that they have obtained permission for construction, held that the Plaintiffs have failed to prove that they have carried out the construction with permission and the factum of obtaining electric and telephone connections would not legalize the said construction. The Trial Court accordingly, as indicated above, by its order dated 27/01/2015 has rejected the application (Exhibit 5) for temporary injunction.

5 The Plaintiffs aggrieved by the said order dated 27/01/2015 filed Misc. Civil appeal No.51 of 2015. The Lower Appellate Court on a re-appreciation of the material on record did not find any reason to interfere with the order passed by the Trial Court, and by reiterating the findings recorded by the Trial Court as regards Plaintiffs' claim that the land in question was allotted

in lieu of the land which has gone in road widening dismissed the said Appeal.

6 The learned counsel appearing for the Petitioners – original Plaintiffs Shri Shetye would contend that the reply to the notice dated 06/11/2012 has not been taken into consideration and neither has the Municipal Corporation offered opportunity to the Plaintiffs pursuant to the notice dated 18/10/2014. In view of the grievance made by the learned counsel for the Petitioners which was revolving around the breach of the principles of natural justice, this Court asked the learned counsel for the Petitioners as to the documents which the Plaintiffs seek to rely in support of the fact that the land was allotted to the Plaintiffs in lieu of the land which has gone in the road widening or that the construction in question is legal.

7 The learned counsel for the Petitioners in so far as the first aspect is concerned, sought to place reliance on the letter addressed to the Police Inspector of the Traffic Division in support of his contention that the land was allotted to the Plaintiffs in lieu of the land which has gone in the road widening. The said document has already been considered by the Courts below. In my view, having regard to the contents of the said document, the conclusions drawn by the Courts below cannot be found fault with. The said document can hardly said to confer any right on the Plaintiffs qua the land in question, and more so, when the Plaintiffs are claiming title to the said land on

the basis of some allotment made by the erstwhile Municipal Council.

8 In so far as the second aspect is concerned, the learned counsel for the Petitioners fairly conceded that the Plaintiffs have no documents to show that the construction was put up by obtaining permission either from the Municipal Corporation or for erstwhile Municipal Council. In my view, therefore, assuming that the Plaintiffs were not heard pursuant to the notice dated 18/10/2014, the same would not make any difference as the Plaintiffs have not placed an iota of evidence in their favour so as to prima facie come to the conclusion that on account of the breach of the principles of natural justice, there is a breach of any right which is vested in the Plaintiffs.

9 In the light of the concurrent orders passed by the Courts below, no case for interdiction in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

10 On the request of the learned counsel for the Petitioners/Plaintiffs who states that the original Plaintiffs would remove the structure in question within four weeks from date, the Plaintiffs are granted four weeks time to remove the structure in question. The same would be on the condition that the Plaintiffs file the usual undertaking in this Court within one week that they would remove the structure in question within four weeks from date. If the

undertaking is not filed within the time stipulated by this Order or that the Plaintiffs do not remove the structure within four weeks from date after the undertaking is filed, then the Respondent-Municipal Corporation would be free to demolish the structure in question. The copy of the undertaking filed by the Petitioners/Plaintiffs to be served on Shri N.R. Bubna, the learned counsel appearing on behalf of the Respondent No3 herein.

[R.M.SAVANT, J]

Certified to be true and correct copy of the original signed order.