

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.5275 OF 2015

Sunil Devappa Bodhekar and 18 ors.

-vs-

The Chief Officer, Municipal Council, Buldhana and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri A. G. Gharote, Advocate for petitioners.

Shri A. R. Sambre, Advocate for respondent No.1.

CORAM : A.S.CHANDURKAR, J.

DATE : December 07, 2015

The petitioners herein are aggrieved by the order passed by the Appellate Court dated 19/06/2015 by which the Misc. Appeal filed by the respondents has been allowed and the order of injunction granted by the trial Court on 10/02/2015 has been vacated.

On 27/11/2014, a public notice came to be issued by the respondents seeking to remove encroachment on the public properties owned by the Municipal Council. Pursuant to said notice, the petitioners filed suit for declaration that said notice was illegal and also for permanent injunction so as to protect their possession. An application for temporary injunction was also moved. In reply filed on behalf of the Municipal Council, a stand was taken that resolution dated 28/01/2009 had been passed by the Municipal Council for providing alternate lands to various encroachers. Proposal in that regard was pending with the Collector.

The trial Court came to the conclusion that a prima facie case had been made out by the petitioners and considering their long standing possession, temporary injunction came to be granted. The Appellate Court found that the Municipal Council was within its authority in seeking to remove the encroachments and that the petitioners had no legal right to continue in occupation.

Shri A. G. Gharote, learned counsel for the petitioners submitted that considering the fact that for almost 33 years the petitioners were in occupation and were paying taxes, they could not have been evicted in a summary manner. He relied upon judgment of the Supreme Court in *G. Manikyamma vs. Roudri Co-operative Housing Society Ltd. 2014 DGLS (Soft.) 895* in that regard. He further submitted that till the proposal as forwarded to the Collector was duly considered, the possession of the petitioners deserves to be protected.

Shri A. Sambre, learned counsel for the respondents supported the impugned order. He submitted that there was no legal right in favour of the petitioners. There was no allotment of space in their favour. Merely on the basis of sympathy the protection could not be granted. He placed reliance on judgment of the Supreme Court in *Nagar Palika Prarishad, Mihona and anr vs. Ramnath and anr 2014(4) All MR 405*.

Having perused the impugned orders along with

other documents on record, it is seen that the Appellate Court has found that there was no prima facie case with the petitioners. No documents indicating allotment of respective sites were placed on record. The eviction was pursuant to public notice issued by the respondents. In response to said notice, it was open for the petitioners to at least prima facie make out a legal right for continuing in possession. In that context, eviction is not in a summary manner as sought to be urged. An opportunity to place on record the legal right was available before the civil Court. The observations in paragraphs 35 to 37 of the judgment in case of *G. Manikyamma* (supra) do not support the case of the petitioners. The Appellate Court has taken into consideration relevant aspects of the matter. The view as taken cannot be faulted nor could it be said to be perverse. By observing that in case the proposal submitted by the Municipal Council to the Collector is accepted, it would be open for the petitioners to take necessary steps in that regard, there is no case made out to interfere in writ jurisdiction.

The petition is therefore dismissed with no order as to costs.

JUDGE