

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

913 SECOND APPEAL NO. 255 OF 2016
WITH CA/4087/2016 IN SA/255/2016
WITH
SA/256/2016 WITH CA/4088/2016 IN SA/256/2016 WITH
CA/4089/2016 IN SA/256/2016

RAJENDRA POPAT WAGHMARE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE DISTRICT
COLLECTOR

...
Advocate for Appellants : Surve Hemant
AGP for Respondents : S.D. Kaldate
...

CORAM : T.V. NALAWADE, J.
DATED : 31st March, 2016.

ORDER :

1. Second Appeal No. 255/2016 is filed against judgment and decree of Regular Civil Suit No. 9/2012, which was pending in the Court of Civil Judge, Senior Division, Kopergaon and also against the judgment and decree of Regular Civil Appeal No. 96/2013, which was pending in the Court of District Judge-2, Kopergaon, District Ahmednagar. Regular Civil Suit No. 9/2012 was filed by in all eight traders for relief of declaration and injunction against present respondents, the State Government and the Collector. These eight traders challenged the decision in First Appeal, but out of the eight plaintiffs only five plaintiffs have challenged the decision of the First Appellate

Court by filing present appeal.

2. Other Second Appeal No. 256/2016 is filed against judgment and decree of Regular Civil Suit No. 8/2012 and judgment and decree of Regular Civil Appeal No. 95/2013. The said suit was filed by eight traders and all the traders have come to this Court to challenge the decisions of the Courts below. Both the suits were tried together and the appeals filed against the decisions are also decided by common judgment. Heard the learned counsel for appellants.

3. In the two suits, notices given by the Tahsildar under the provisions of Maharashtra Land Revenue Code for removal of encroachment made by these traders were challenged. In those notices, Tahsildar had asked them to remove the encroachment and had informed that if the steps are not taken for removal, the State machinery will remove the encroachment. It was contended by plaintiffs that one Mohammad Ali Sayyed was the owner of the land involved, Survey No. 336/2A, though the land was shown in the name of Government. It was contended that suit was pending between these person and the Local Body and so, Government cannot say that the plaintiffs have made encroachment on the land of the Government.

4. The suits were contested by the Government by contending that separate notices were given to the plaintiffs and all the plaintiffs ought to have filed separate suits and the suits in the present form are not tenable. It was contended that the notices given were legal. It was contended that only to protract the taking of the possession by the Government of the Government land, the suit was filed.

5. The main contention of the plaintiffs was that the Tahsildar has no power to issue notices under section 50 (3) of the Maharashtra Land Revenue Code and so, the notices are illegal. Issues were framed on the basis of aforesaid pleadings.

6. Both the sides gave evidence. It is not disputed by the plaintiffs that they have no right or interest in the property, on which they have kept their kiosks, the stalls for running businesses. The Trial Court has considered the provisions of section 50 (1) and 53 (1) and has held that the Collector has power to take action for removal of encroachment and for action under section 50, the Collector is not expected to give notice before removal of encroachment. The Trial Court has further held that in view of the documents like Exhs. 85 and 86, the power

was delegated to Tahsildar by the Collector in this regard and so, it cannot be said that notices issued are illegal. It is also held that without offering explanation in respect of notices, the plaintiffs have rushed to the Court and so, the suits were premature. However, it is further observed that there is nothing with the plaintiffs to show that they have right to keep the possession. The kiosks are kept there without taking permission of Local Body also and from that point also, there is illegality.

7. It was submitted before the Courts below for the plaintiffs that the plaintiffs had applied to Government for regularisation of encroachment and as no decision was taken on their representation, their possession needs to be protected. The material produced on the record shows that the encroachment is not on open space, but it is virtually on State highway, Ahmednagar - Manmad highway. This portion is the area which cannot be developed in view of the provisions of Highway Act and no construction can be made on this space. This portion was immediately required for road widening purpose and so, the defendants were taking such action. It appears that by filing suit and due to some orders made by the Courts below, the Government could not take action and the plaintiffs successfully remained on the space from 2013 till today. The development

activities halted due to the orders made by the Courts below. It appears that even after dismissal of the appeal, further order of statusquo was made by the First Appellate Court.

8. This Court has carefully gone through the provisions of Maharashtra Land Revenue Code like sections 50 to 53. The provision of section 50 (5) shows that order made by Collector can be challenged by filing appeal before the appellate authority. Admittedly, this recourse was not used. The provision of section 50 (6) shows that only when the decision given under these provisions becomes final, the suit can be filed to establish the rights in Civil Court and that too, within six months from the date when the decision of the revenue authority becomes final. It can be said that in the present matters, there is no right as such to the plaintiffs to continue the possession, but by making some contentions, they have remained on the space due to the orders made by the Courts below. The Trial Court has rightly held that the provision of section 50 is applicable in such cases. The record is produced to show that the Collector has delegated the powers to Tahsildar, both in respect of agricultural lands and non agricultural lands. Thus, there is no illegality in the notices given against the plaintiffs and there are further aforesaid circumstances. In view of the facts and circumstances, this Court

has no hesitation to observe that the Courts below did not take proper care, they did not take even the security from the plaintiffs for getting order like statusquo and due to that the Government could not take the steps like widening of the road in respect of that portion.

9. The learned counsel for appellants placed reliance on the following cases :-

(i) 2008 LawSuit (SC) 114 [Basayya I Mathad Vs. Rudrayya Mathad],

(ii) 2012 LawSuit (SC) 433 [Union of India Vs. Ibrahim Uddin and Anr.],

(iii) 1967 LawSuit (SC) 347 [Associated Hotels of India Ltd. Vs. S.B. Sardar Ranjit Singh],

(iv) 1951 LawSuit (SC) 15 [Arjun Singh Vs. Kartar Singh],

(v) 2000 LawSuit (SC) 1963 [Mahavir Singh Vs. Naresh Chandra],

(vi) 2008 LawSuit (SC) 452 [North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das],

(vii) 1964 LawSuit (SC) 237 [Municipal Corporation of Greater Bombay Vs. Lala Pancham], and

(viii) 2015 (8) LJSOFT 45 [Smt. Parvatibai w/o. Chottelal Baisware Vs. Smt. Noorien wd/o. Bhushan Rangaswami & Anr.].

The learned counsel submitted that some record was produced

in the appeal to show that there was delegation of power to Tahsildar in respect of non agricultural land also and proper procedure was not followed by the Appellate Court for accepting copy of that order. The decision given by the First Appellate Court shows that the Appellate Court has considered the said record. It can be said that only due to the specific contentions, which must have been made by the plaintiffs, the relevant entire record was produced. The plaintiffs have no right at all in respect of the land. Without paying anything to the Government, they have used the land for many years and the provision of section 50 shows that when no explanation is there with such persons, Collector can exercise the power under section 50 and the purpose of notice is only to give opportunity to such persons to explain and say something about their rights. In view of these circumstances, the technicality that such record was not produced in the Trial Court cannot be considered.

10. On the other hand, the learned AGP for State placed reliance on the case reported as **1995 (3) SCC 33 [Mahadeo Savlaram Shelke Vs. Pune Municipal Corporation]** and he submitted that the State has already suffered losses and the project value has gone up, but due to the orders made by the Courts below the State feels helpless. Principles are laid down by

the Apex Court, which needs to be followed by the Courts before issuing injunction. This Court has no hesitation to hold that unfortunately the Courts below did not follow the procedure and due to the orders made by the Courts below, the development activity was halted and the project value must have increased many times. No substantial question of law as such is involved in the matters. This Court sees no reason to interfere in the decisions given by the Courts below. Thus, both the appeals need to be dismissed.

11. In the result, the appeals are dismissed. All Civil Applications are disposed of.

12. The learned counsel for appellants requested for some time as he wants to challenge the decision. In view of the aforesaid discussion, this Court holds that no interim relief, even for a single day, can be granted in favour of appellants. Such request is refused.

[T.V. NALAWADE, J.]

ssc/