

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 621 OF 2016

- 1] Shri. Pravinchandra Jinabhai Patel,
Age 69 years, Occu. Business,
R/o Near Collector Bunglow,
Jalgaon, Dist. Jalgaon

.. Petitioner
(Orig. Deft. No.3)

Versus

- 1] Lalan Ramayan Yadav,
Age 36 years, Occ. Business,
R/o M.I.D.C. Jalgaon,
District Jalgaon
- 2] Maharashtra Industrial Development
Corporation, through its
Authorised Officer, MIDC,
Jalgaon, Dist. Jalgaon
- 3] Maharashtra State Electricity
Distribution Co. Ltd.,
Through its Executive Engineer,
Mutton Market, Jalgaon,
District Jalgaon
- 4] Digambar Mulchand Patil,
Age 50 years, Occ. Service
- 5] Hemant S. Sharma,
Age 52 years, Occu. Service
- 6] Jayendra Hiralal Patel,
Age 57 years, Occu. Service
- 7] B.I. Junagade,
Age 40 years, Occu. Service,
Resp. No. 4 to 7 R/o. Bahanabai Garden,
Jalgaon, Dist. Jalgaon

8] The Collector for State of
Maharashtra, Jalgaon

.. Respondents
(Orig.Plff. & Deft.
No.1, 2 to 4 to 8)

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Advocate for Petitioner : Mr. Patekar N.B. h/f Mr. Katneshwarkar P.R.

Advocate for respondent no.1 : Mr. A.I. Deshmukh

Advocate for respondent no.2 : Mr. G.S. Khaire h/f Mr. S.S. Dande

AGP for respondent : Mr. P.N. Kutti

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CORAM : SUNIL P. DESHMUKH, J.

DATE : 29-08-2017

ORAL JUDGMENT :

1. Learned counsel for respondent no.1 Mr. Deshmukh clarifies that it is under mistake of fact, perhaps, instruction appears to have slipped and writ petition is declared to have been abated against respondent no.1, however, respondent no.1 is very much alive.

2. In the circumstances, the order of abatement dated 24-04-2017 stands recalled.

3. Rule. Rule made returnable forthwith. Learned counsel Mr. Patekar h/f Mr. Katneshwarkar appears for the petitioner, Mr. A.I. Deshmukh is present for respondent no.1 and Mr. G.S. Khaire h/f Mr. Dande appears for respondent no.2. Heard aforesaid appearing learned counsel finally, by consent.

4. The petition purports to take exception to two concurrent orders, one passed by trial court on the application for temporary injunction in regular civil suit no. 143 of 2011 and the other by appellate court dated 01-12-2014 in miscellaneous civil appeal no. 25 of 2012.

5. Learned counsel Mr. Patekar vehemently submits that while Maharashtra Industrial Development Corporation ("MIDC" for short) is owner of the property, which has been leased out to petitioner, a claim for sub-tenancy at the behest of respondent no.1-plaintiff is untenable, looking at the terms and conditions of lease between petitioner and MIDC. He submits that there is no contemporaneous record depicting possession of plaintiff over suit property viz. electricity bills etc. In the circumstances, may be that the petitioner for his courteous act of letting plaintiff occupy a portion of leased out land, is being misutilized by institution of the suit. He submits that on aforesaid background, both the orders rendered by two courts are untenable and ought to be set aside.

6. Learned counsel Mr. A.I. Deshmukh submits that in any case, it is defendant no.3 - petitioner's own case that there had been an agreement for occupation of whatever little space executed between respondent no.1 and petitioner and it emerges that

respondent no.1 is in occupation of the concerned property.

7. He submits that not only this, for connection of electricity, he had applied to Energy Supplying Agency with requisite charges therefor. The court has also referred to that the petitioner has been a registered businessman, showing address of the disputed premises. As such, there was sufficient material produced discharging the burden about plaintiff having *prima facie* case, balance of convenience lying in his favour and irreparable loss, since he is carrying on activity of manufacture. Legality or otherwise of the occupation is not germane at the stage of temporary injunction.

8. He submits that even a trespasser is entitled to protection of his possession through injunction and he can be dispossessed only through due process of law and not otherwise. He, therefore, submits that the impugned orders do not require to be tampered with.

9. Perusal of two orders passed show that the courts concurrently from the material appearing before it, had judged that plaintiff has been able to make out *prima facie* case and further that he would suffer irreparable loss due to dispossession and in the circumstances, have culled out that balance of convenience is in

granting temporary injunction in favour of the plaintiff.

10. Concurrent observations on *prima facie* facts have been rendered by two courts hitherto with reference to material hitherto placed on record. It does not appear to be a case liable to be interfered with, more so, since the suit has been pending from 2011. As such, writ petition is not being entertained and is dismissed.

11. Request on behalf of the petitioner that trial court should proceed with the suit expeditiously, appears to be legitimate in the facts and circumstances of the case. As such, the trial court may proceed with the suit as expeditiously as possible.

12. Writ petition accordingly stands disposed of.

13. It is further being made clear that the observations aforesaid in this order as well as in the impugned orders at the stages of interim relief during trial as well as miscellaneous civil appellate stage, are at interlocutory stages and, as such, do not have influential efficacy beyond decision in the interlocutory applications and shall not affect merits of the case in the suit.

14. Rule stands discharged.

[SUNIL P. DESHMUKH]
JUDGE

arp/