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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9837 of 2016

1. The Chairman,
Krushi Utpanna Bazaar Samitee,
Nawapur Taluka Nawapur Dist. Nandurbar
2. Krushi Utpanna Bazaar Samitee,
Nawapur Taluka Nawapur Dist. Nandurbar.

...PETITIONERS

VERSUS

Bapu Manga Sonawane
age 54 years occupation business
R/o Nawapur Taluka Nawapur District Nandurbar.

...RESPONDENT.

Mr Rahul R. Raghuwanshi, Advocate for petitioners.
Mr R.S. Wani, Advocate for respondent sole.

**CORAM : NITIN W. SAMBRE, J.
DATE :12th September, 2017**

ORAL ORDER :

On issuing notice by the present petitioners/defendants citing a cause of action of eviction, the respondent/plaintiff filed Regular Civil Suit No. 41 of 2010 seeking injunction from the Court below that he be not evicted without following due process of law and his structure accordingly be not demolished.

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2. After the Trial Court passed order under Order XXVI of the Civil Procedure Code appointing Court Commissioner at the behest of present petitioners, the respondent/plaintiff moved an application Exh. 5 for grant of injunction which came to be rejected. However, in an appeal the same came to be allowed being Misc. Civil Appeal No. 1 of 2012, ordering that present respondent/plaintiff be not evicted without following due process of law. As such, this petition.

3. Amongst the other grounds for questioning order impugned granting injunction raised by learned Counsel Mr Raghuwanshi are; it could be inferred from the record that the respondent/plaintiff has encroached on the land of the Agricultural Produce Market Committee and also the government land. In view of provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, particularly section 5-A, the respondent can be evicted by the petitioner - APMC or by the State Government. He would draw support from the judgment of this Court in the matter of **Bharat Purohit Mithaiwala Vs. Union of India & Anr. {2005(4) ALL MR 195}**.

4. He would then urge that the application for injunction was not accompanied with the suit but filed subsequent to the measurement

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report submitted by the Court Commissioner, which speaks of conduct of respondent/plaintiff to be by way of after-thought.

5. Per contra, the learned Counsel for the respondent submits that nature of injunction ordered by the Appellate Court is not to evict respondent/plaintiff without following due process of law. According to him, the petitioners/defendants have neither filed any counter claim of eviction and possession / removal of encroachment nor any suit is filed by them. According to him, injunction will operate only till decision in the suit, and as such, no interference is warranted as the order of injunction is holding the field since last two years.

6. Considered rival submissions. It is required to be noted from the record that even if respondent/plaintiff is to be evicted, the petitioner/APMC being statutory authority is not vested with the power to straightway enter into the premises and throw away respondent/plaintiff. As such, conditional injunction clamped by the lower Appellate Court is within the framework of law, and in my opinion, it does not call for any interference as the same shall operate till the decision in the civil suit.

7. However, the injunction will not preclude present petitioners/defendants from filing a counter claim seeking removal of

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encroachment, if any, and possession of the encroached portion or of filing any separate suit for the same relief.

8. With above liberty, I hardly notice any substance in the petition. The petition, as such, fails and stands dismissed.

(NITIN W. SAMBRE, J.)

pjm