

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

Second Appeal No.243 of 2015
(Ramkrishna Gosai Pachare v. State of Maharashtra, through Collector,
Yavatmal, and others)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Smt. Neeta Jog, Advocate for Appellant.
Ms Harshada Prabhu, Assistant Government Pleader for
Respondent Nos.1 and 2.
Shri S.A. Sahu, Advocate for Respondent No.3.

Coram : R.K. Deshpande, J.

Date : 9th January, 2017

1. The Trial Court dismissed Regular Civil Suit No.55 of 2003 for declaration that the plaintiff is entitled for the use and occupation of the suit land and for grant of perpetual injunction restraining the defendants from ousting the plaintiff from the land in question without having recourse to due process of law. The lower Appellate Court has dismissed Regular Civil Suit No.80 of 2005 on 17-2-2015. Hence, the original plaintiff is before this Court in this second appeal.

2. On 15-6-2016, this Court passed an order as under :

“ *The trial Court dismissed Regular Civil Suit No.55 of 2002 on 31.08.2005 for a declaration that the plaintiff is*

entitled for use and occupation of the land for commercial purpose and further for grant of perpetual injunction restraining the defendants from ousting the plaintiff from use and occupation of the suit plot for commercial purposes without due process of law. The lower Appellate Court has dismissed Regular Civil Appeal No.80 of 2005 vide its judgment and order dated 17.02.2015. Hence, the original plaintiff is before this Court in the second appeal.

The claim of the plaintiff for being in possession of the suit property is based upon the agreement dated 05.03.1986 entered into between the plaintiff and the Sub-Divisional Officer (Revenue, Wani), the agreement at Exhibit-63 in Form No.XVI for continuation of encroachment between the plaintiff and the Nazul Officer and the permit at Exhibit-58 authorizing plaintiff to run a Cycle Shop. The claim of the Municipal Council is for removal of such encroachment of the plaintiff over the suit property. The Courts below have held that the land in question stands vested in the Municipal Council and it is required for enlargement of road. The claim of the plaintiff is that he should not be evicted without following due process of law and the plaintiff deserves the possessory title on the basis of the agreement and the permit showing his possession since 1974.

Issue notice before admission to the respondents returnable on 10.08.2016.

Shri P.S. Tembhare, the learned A.G.P. waives service of notice for respondent Nos.1 and 2.

The respondent No.3 be served by R.P.A.D. in addition to regular mode.

The learned counsel for the appellant to produce on record the copy of plaint.

Call for R & P.”

3. The record and proceedings are called and perused.
4. Exhibit 58 dated 28-10-1974 is the document by which the land in question was given to the plaintiff for his use and occupation for the period from 1-4-1974 to 31-12-1974. Exhibit 62 is the order passed by the Sub-Divisional Officer, Wani, on 5-3-1986 granting Plot No.45 upon certain terms and conditions stipulated therein. Pursuant to the said order, an agreement dated 7-3-1986 at Exhibit 63 was entered into between the Government and the plaintiff. The condition No.1

mentioned in the agreement is reproduced below :

“1. The said construction shall be allowed to remain so long as the said land is not required by the Government for the use of the Government or for a public purpose.”

5. It is in this background the notice was issued under Section 55 of the Maharashtra Regional and Town Planning Act by the Municipal Council as the Planning Authority for removal of encroachment for the purposes of widening of road. The Courts below have recorded the finding that the plaintiff has failed to establish that he is in possession of the suit plot since 1975 and is carrying on the business of cycle repairing shop. They have also recorded the finding that the plaintiff has failed to establish that the defendants are illegally restraining him from carrying out the business of running flour-mill and other commercial activities on the suit land.

6. The plaintiff is not the owner of the land in question. Initially, the grant of land by the Municipal Council was for a fixed period. The Sub-Divisional Officer granted the land on “no-claim” basis with a specific understanding that the construction shall be allowed to remain so long as the said land is not required by the Government for the use of the Government or for a public purpose. The notice has been issued by the Municipal

Council requiring the land for widening of the road.

7. Smt. Jog, the learned counsel for the appellant/plaintiff, has invited my attention to the application at Exhibit 13 filed under Section 107 read with Order XLI, Rules 27 and 33 of the Code of Civil Procedure for permission to lead additional evidence to the effect that the land in question is now required for beautification of *chowk* and, therefore, another notice dated 4-3-2010 has been given. She submits that the Collector has also granted stay to the resolution putting the land to the use of beautification. She further submits that the Municipal Council has also pleaded to the Government for allotment of the land in question.

8. The question involved is of the right of the plaintiff to remain in possession of the suit land. The plaintiff is not the owner of the suit land, but is holding the possession thereof on “no-claim” basis with a specific understanding that the construction shall be allowed to remain so long as the said land is not required by the Government for the use of the Government or for a public purpose. The public purpose for which the land is demanded is obvious for widening of road.

9. No substantial question of law arises. The second appeal is dismissed.

Judge.

Lanjewar