

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

WRIT PETITION NO.6394/2016

Sudam S/o Atthumal Jeswani and others

..Vs..

Municipal Council, Akot, Tq. Akot, Distt. Akola, through its Chief Officer

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

Court's or Judge's orders

CORAM : Z.A.HAQ, J.

DATE : 12.4.2017.

C.A.W NO.914/2017

Though the learned Advocate for the respondent opposes the application, the petitioners are permitted to amend the petition as prayed in the application. The amendment be carried out forthwith. Civil application is **allowed** accordingly. No costs.

WRIT PETITION NO.6394/2016

Heard Shri R.L. Khapre, Advocate for the petitioners and Shri S.C. Mehadia, Advocate for the respondent.

The petitioners claiming to be allottees had filed Writ Petition No.2970/1984 before this Court challenging the notice issued by the Sub-Divisional Magistrate, the Executive Engineer and the Collector calling upon the petitioners to hand over the possession of the open land. The Division Bench of this Court by the order passed on 28th January, 1998 dismissed the writ petition recording that the allottees had filed civil

suit for similar reliefs. However, the Division Bench observed that the petitioners in Writ Petition No.2970/1984 were not entitled to occupy the plots in question.

Miscellaneous Civil Application Nos.133/1998, 501/2002 and 86/2005 were filed by the allottees seeking review of the judgment and order passed in Writ Petition No.2970/1984.

In the review application, the Municipal Council submitted that if any plot was to be allotted on lease, a public notice would be published inviting tenders and if any allottee offers amount equivalent to the highest bid, the plot would be allotted to such allottee from amongst the petitioners. This Court accepted the proposal of Municipal Council and disposed the review application. As it happens, the Municipal Council did not take any action and because of it the petitioners continued with their illegal occupation of the plots in question. Ultimately, on 31st May, 2016 notices came to be issued calling upon the petitioners to hand over the possession of the plots in question within 48 hours. The petitioners challenged these proceedings by filing civil suit. In the civil suit an application under Order 39 Rules (1) and (2) read with Section 151 of the Code of Civil Procedure was also filed praying for temporary injunction restraining the Municipal Council from acting upon the notice dated 31st May, 2016. The trial Court rejected the application by the order dated 23rd September, 2016 and the appeal filed by the petitioners

under Order 43 Rule 1(r) of the Code of Civil Procedure is dismissed by the impugned judgment.

The learned Advocate for the petitioners has raised several issues. One of the contention is that the possession of the petitioners over the land in question cannot be said to be illegal. It is submitted that the petitioners are in possession for more than 3 decades and have been paying the statutory taxes regularly and, therefore, the petitioners cannot be evicted without following due procedure of law. It is argued that as per Section 100-A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 the petitioners cannot be ousted unless proceedings are taken under the Maharashtra Government Premises (Eviction) Act, 1955 and the Rules made thereunder. The thrust of the argument is that the Municipal Council cannot evict the petitioners by giving notices as done in the present case. To support this submission the learned Advocate for the petitioner has relied on the judgment given in the case of *New India Assurance Co. Ltd. V/s. Nusli Neville Wadia and Anr.* reported in **AIR 2008 SC 876**.

After hearing the learned Advocates for the petitioners and the respondent and considering the documents placed on the record of the petition, I find that the subordinate Courts have rightly rejected the claim of the petitioners for grant of temporary injunction. The Standing Committee of Municipal Council had passed Resolution No.45 on 14th September, 1982 which

was approved by the General Body by Resolution No.9 passed on 26th October, 1982 regarding land in question. Three persons, who were Councillors when the resolutions were passed had filed Writ Petition No.680/1983 before this Court challenging the above resolutions. By the judgment delivered on 28th January, 1988 this Court allowed the writ petition. Paragraph No.16 of the judgment is relevant and is as follows:

“16. The facts as brought before us show that the Sub-Divisional Magistrate on 8.10.1982 has issued notice under section 144 of the Code of Criminal Procedure, that the State Government has disapproved the Councillor's act and that the report of the Assistant Director of Town Planning dated 5.11.1982 shows that the construction is totally illegal. Even the Chief Officer of the Municipal Council in his return dated 23.9.1985 in Writ Petition No.2970 of 1984 stated that the Resolutions are illegal.”

Division Bench of this Court held that the resolutions were illegal and the construction made on the land in question was also illegal. The present petitioners claim right through their predecessors against whom findings are recorded in the above judgment. Section 100-A of the Act of 1965 is inserted by Maharashtra Act No.XI of 1983. Section 100-A of the Act of 1965 states that Maharashtra Government Premises (Eviction) Act, 1955 and Rules made thereunder shall apply to the Municipal Premises with effect from such date and in such Municipal Council areas as the State Government may by notification in the official gazette specify. Writ

Petition No.2970/1984 which was filed against the predecessors of the present petitioners is decided on 28th January, 1998. Then review applications were filed which are dismissed in 2005. There is no explanation why Section 100-A of the Act of 1965 was not relied upon in the above proceedings. In Writ Petition No.2970/1984 notices issued by the Sub-Divisional Magistrate, Executive Engineer and Collector calling upon the predecessors of the petitioners to remove the illegal construction were challenged. If at all, the predecessors of the present petitioners wanted to rely on the provisions of Section 100-A of the Act of 1965 such challenge could have been raised. The notices which are now issued and which are subject matter of challenge in the present civil suit *prima facie* appear to be a follow-up action after this Court found that the predecessors of the petitioners had no legal right to continue in possession of the lands in question. *Prima facie* it appears from the record that the petitioners continued in possession over the land in question only because of the dormancy and inaction on the part of the Municipal Council.

It is argued on behalf of the petitioners that in the review application the Municipal Council made submissions before this Court that the petitioners will not be evicted till steps are taken as per the scheme formulated by it, public notices are issued, tenders are invited and opportunity is given to the occupants to offer the amount equal to the highest bid and as the Municipal Council has not taken any action as assured before this

Court there was no occasion for the petitioners to initiate any proceedings. This submission cannot be accepted. The Written statement filed on behalf of the Municipal Council in the review proceedings and the order passed by this Court on 22nd December, 2005 do not reflect what is being now argued.

Section 92 of the Act of 1965 bars transfer of any immovable property of the Municipal Council without sanction of the State Government. In exercise of the powers conferred by Sub-section (2) of Section 321 read with Sub-section (2) of Section 92 of the Act of 1965 the Maharashtra Municipalities Transfer of Immovable Property Rules, 1983 are made. Part III of these Rules provide for the manner and disposal of land which vests in the Municipal Council. The petitioners have not placed any material on the record to show that the Municipal Council followed the procedure as laid down in Part III of the above Rules before allotting the land in question. On the contrary, Division Bench of this Court allowed Writ Petition No.680/1983 in which the resolutions passed by the Municipal Council were challenged, observing that the State Government had disapproved the resolutions. The unauthorized occupation of the petitioners cannot fructify into legitimate right entitling the petitioners to claim discretionary relief under Order 39 of the Code of the Civil Procedure.

In the facts of the present case, in my view, at this stage, the argument made on behalf of the

petitioners relying on the provisions of Section 100-A of the Act of 1965 cannot be considered. The judgment relied upon by the learned Advocate for the petitioners is of no assistance to the petitioners.

The learned District Judge while disposing the appeal has directed that each plaintiff shall pay Rs.1,000/- per day from the date of filing of the writ petition till the land is vacated. In addition, Rs.5000/- is directed to be paid to Taluka Legal Services Authority, Akot by each of the plaintiff. Though it cannot be said that the learned District Judge has committed an error, the above directions are modified as follows:

If the petitioners hand over vacant possession of the land in question to the Municipal Council within 15 days, the directions given by the learned District Judge vide paragraph No.2 of the operative part of the order shall not be enforced against the petitioners who hand over the possession within time.

If the possession is not handed over within 15 days then the directions shall be enforced against the petitioner / petitioners who fail to hand over the vacant possession within 15 days.

The petition is disposed accordingly.

In the circumstances, the parties to bear their own costs.

JUDGE