

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

SECOND APPEAL NO.226 OF 2017

PRAKASH S/O RAMBHAU BELE & OTHERS
VS
MUNICIPAL COUNCIL BALLARPUR

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

Court's or Judge's orders

Shri V. R. Thote, Advocate for the appellants.
Shri M.I. Dhatri, Advocate for the respondent.

CORAM : A.S. CHANDURKAR, J.
DATED : JULY 19, 2017.

The appellants are original plaintiffs who are aggrieved by the judgment of the appellate Court allowing the appeal filed by the respondent and dismissing the suit for perpetual injunction.

It is the case of the plaintiffs that they were granted lease of Khasra No.40 owned by the defendant – Municipal Council for carrying on business. The plaintiffs had paid rent up to 31-03-1984 and on 05-07-1984, a notice was issued by the Chief Officer informing the plaintiffs that as the Municipal Council intended to construct a market on the said property, they should vacate the same. On that basis, a suit for permanent injunction seeking to restrain the

Municipal Council from interfering with their possession came to be filed.

In the written statement at Exhibit-30, it was pleaded that the property vested with the Municipal Council and it intended to construct a market therein. It was denied that the plaintiffs had any right to occupy the said portion and that in absence of any legal right, no injunction could be granted.

The trial Court decreed the suit by observing that the plaintiffs had legal right to carry on business on Khasra No.40. In the appeal preferred by the Municipal Council, the appellate Court reversed the said decree on the ground that there was no right to occupy Khasra No.40. Being aggrieved the plaintiffs have filed this appeal.

Shri V. R. Thote, learned Counsel for the plaintiffs submitted that in view of provisions of Section 266 of the Maharashtra Municipal Council Nagar Panchayats and Industrial Township Act, 1965, it was the duty of the Municipal Council to maintain and facilitate the Municipal Market. On the basis of agreement entered into with the Municipal Council, the plaintiffs were in possession and therefore, the notice issued to them was illegal. It was further submitted that as per the aforesaid agreement, it was agreed that alternate site will be provided to the plaintiffs if

they were to be evicted from Khasra No.40.

Shri M. I. Dhattrak, learned Counsel for the respondent supported the impugned judgment. According to him, there was no legal right with the plaintiffs to continue in occupation of Khasra No.40. Only one agreement was proved by the plaintiff No.16 and the appellate Court, therefore, rightly dismissed the suit.

I have heard the learned Counsel for the parties and perused the impugned judgments. The case of the plaintiffs is based on the agreement dated 17-9-1973 which was entered into by the Municipal Council with the plaintiffs. By said agreement, the plaintiffs were permitted to occupy 100 sq. ft. land for a period of one year. It has been found that the agreement at Exhibit-151 was between the plaintiff no.16 and the Municipal Council. No other agreement in favour of the other plaintiffs was brought on record. This agreement was valid for a period of one year from 1-4-1973 to 31-3-1974. After said period, there is no fresh agreement. Though it is submitted that the lease amount was being collected by the Municipal Council, in absence of any agreement thereafter the legal right of the plaintiffs is not established.

The appellate Court has further found that the notice issued was not under Section 266 of the said Act but

for achieving the object of constructing a market complex. It is, therefore, clear that in absence of any legal right in their favour the plaintiffs were rightly denied the relief of permanent injunction. The appellate Court has rightly dismissed the suit.

Hence, the second appeal does not give rise to any substantial question of law. Needless to state that on construction of a new complex, it will be open for the plaintiffs to seek allotment in accordance with law. The order of status quo shall continue to operate for a period of eight weeks and shall cease to operate thereafter.

JUDGE

/MULEY/