

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

WRIT PETITION NO.4479/2017

Dadarao S/o Shankarrao Moon and others

..Vs..

The Collector, Wardha and others

AND WRIT PETITION NO.3659/2016

Dada S/o Shankarrao Moon and others

..Vs..

The Collector, Wardha and others

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

Court's or Judge's orders

Shri D.J. Deshpande, Adv. for the petitioners.
Shri N.R. Patil, A.G.P. for respondent Nos.1 and 3.
Shri M.I. Dhatriak, Adv. for respondent No.2.

CORAM : S.C. GUPTE, J.

DATE : 19.9.2017.

1. This writ petition challenges an order dated 26th September, 2016 passed by the Municipal Council, Deoli and confirmed in revision by the Regional Director of Municipal Administration, Nagpur Division, Nagpur on 11th May, 2017. The subject matter of controversy is the notice issued by the Chief Executive Officer, Nagar Parishad, Deoli to the petitioners under Section 181 of the Maharashtra Councils, Nagar Parishads and Industrial Townships Act (for short "Act") requiring the petitioners to remove their respective encroachments and vacate the land owned by the Municipal Council. The removal of encroachment was required for widening of the road between the Municipal Council office to

Aathwadi Bazzar Chowk. The petitioners challenged this notice in a writ petition, being Writ Petition No.5928/2016. This Court by its order dated 28th July, 2016 disposed of the petition with direction to the petitioners to make representations to the Municipal Council within 15 days and with a direction to the Municipal Council to decide such representations as early as possible and take appropriate action in accordance with law. The petitioners thereafter made their respective representations to the Municipal Council. The Municipal Council heard them and by its order dated 26th September, 2016 rejected their representations. This order was challenged by the petitioners once again before this Court by filing a writ petition, being Writ Petition No.5928/2016. This Court by its order dated 28th December, 2016 noted the statements of the parties and the statement of the petitioners' counsel that the petitioners would avail of alternate remedy available to them under Section 318 of the Act. The petitioners thereafter preferred a revision application before the Regional Director, Municipal Administration at Nagpur under Section 318 of the Act. By his impugned order dated 11th May, 2017 the Regional Director rejected the revision application and confirmed the order passed by the Chief Officer of the Municipal Council, Deoli on 28th September, 2016.

2. At the hearing of the present petition, learned counsel for the petitioners states that the petitioners were not encroachers on the government land but actually lease holders in respect of their respective portions where they had

constructed shops. By its order dated 21st August, 2017, this Court called upon the petitioners to produce records concerning the lease as also payment of lease rent by the petitioners. Learned counsel for the petitioners was unable to produce any such record save and except a solitary agreement for lease for a period of one year in the case of the predecessor of petitioner No.1. The agreement in favour of the predecessor of petitioner No.1 was merely for a temporary period of one year, which has expired as far back as on 3rd July, 1970. There is some record to show that for a few days thereafter rent has been paid for the use of the portion of land, though for the last many years there is nothing to show that any lease rent was paid by the petitioners' predecessor to the Municipal Council. Save and except this solitary temporary lease agreement, there is nothing on record that would substantiate the claim of the petitioners of having occupied land under any appropriate authority of law.

3. There is no dispute that the land is a nazul land and is permanently given to the Municipal Council for extension of road and for construction of a market. Under the provisions of Section 181 of the Act no person can set up or place any structure or fixture on any public place or open space vesting in the Council. The only argument in this behalf advanced by learned counsel for the petitioners is that the public place or open space in this case having been vested in the Government, the permission of the Collector had to be taken under the provisions of Section 181 of the Act. As noted by the Regional Director, the record clearly shows that

the land is given to the Municipal Council for the stated purpose and vests with the Municipal Council. There is, accordingly, no case of application of Sub-Section (2) of Section 181 of the Act in the present case.

4. Learned counsel for the petitioners submits that if the initial entry of the petitioners is authorized, they could not be termed as encroachers. As noted above, in the first place, there is no record suggesting any lawful authority to occupy the land at any anterior date in case of anyone except the predecessor of petitioner No.1. Even in that case, it is a temporary lease agreement for one year i.e. upto 3rd July, 1970. Secondly, the fact that the initial entry was justified does not indicate that any continued occupation without authority of law is either lawful or entitled to any protection. The encroachment is being removed in a lawful manner by resorting to Section 181 of the Act.

5. In the premises, the impugned order does not merit any interference. It is passed on correct principles of law and after correctly appreciating and analyzing the facts of the case. There is no illegality committed by the authorities below whilst passing the impugned orders under Sections 181 and 318 of the Act. The petition is accordingly **dismissed**. No costs.

WRIT PETITION NO.3659/2016

6. This writ petition challenges an order passed by

the Additional Collector refusing to renew the so-called lease of the petitioners. This Court has observed above whilst dealing with Writ Petition No.4479/2017 that there is no case of any lease in favour of the petitioners. The petitioners have been held, and correctly so, to be encroachers of public land vesting in the Municipal Council and their challenge to their eviction under the provisions of Section 181 of the Act has been repelled. There is, accordingly, no case for any extension of lease. The impugned order of the Additional Collector refusing such extension or renewal, accordingly, does not suffer from any infirmity. There is no merit in the petition. The petition is **dismissed** accordingly. No costs.

7. At the request of learned counsel for the petitioners, the Municipal Council is directed to give the petitioners four weeks' time to vacate the premises. However, it is made clear that during this period the petitioners shall not make any construction in the shops or alter *status quo* at site otherwise in any way.

JUDGE