

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

WRIT PETITION NO.6232 OF 2016

(SMT.KUNDA GANDHARVDAS WANKHEDE...VS.. STATE OF MAH. THR.DISTRICT COLLECTOR & 2
OTH)

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

Court's or Judge's orders

Shri Prashant Gode, Advocate for Petitioners.
Ms Kalyani Deshpande, A.G.P. for Respondent No.1.

CORAM : Z.A.HAQ, J.

DATED : NOVEMBER 21, 2017.

Heard.

The petitioner has challenged the order passed by the District Judge rejecting the application (Exh.13) filed by the petitioner praying that the operation and execution of the order passed by Lok Ayukta on 21st January, 2014 be stayed.

In Regular Civil Suit No.66 of 1999 filed by the petitioners, decree for perpetual injunction restraining the present respondent No.2 from making any construction on the land which was the subject matter of that suit, was sought. This civil suit is dismissed by the judgment given on 15th January, 2011. Against the judgment and decree passed by the trial Court, the petitioners have filed appeal under Section 96 of the Code of Civil Procedure, which is pending before the District Court. In the meantime, an order is passed by the Lok Ayukta on 21st January, 2014 directing the Sub-Divisional Officer to remove encroachment from the government land. The petitioners filed application (Exh.13) in the appeal pending before the District Court praying that the operation and execution of the order passed by the Lok

Ayukta on 21st January, 2014 be stayed till the decision of the appeal. The learned District Judge has rejected this application observing that the District Court has no jurisdiction to examine the legality of the order passed by the Lok Ayukta. Apart from the fact that the petitioners have not been able to point out that the legality of the order passed by the Lok Ayukta can be examined by the District Court in appeal pending before it filed under Section 96 of the Code of Civil Procedure to challenge the judgment and decree passed in the civil suit in which the petitioners were plaintiffs, the petitioners have not been able to point out that the prayer made in the application (Exh.13) has any nexus with the claim made by the petitioners in appeal before the District Court. The facts on record show that there are no bonafides on the part of the petitioners and filing of the application (Exh.13) is only to stall the removal of encroachment as ordered by the Lok Ayukta. I do not find any justifiable reason to interfere in the matter.

The writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

CAW NO. 2553/2017.

In view of dismissal of the writ petition, the application praying for permission to file documents on record does not survive, hence, it is disposed of.

JUDGE