

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

M.C.A.NO. 1039/18 IN W.P.NO. 2587/2000.

State of Maharashtra and others.

-VERSUS-

Parmanand Variyomal Katyari and others.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri N.R. Patil, AGP for Applicants/Ori.Respondents.
Shri Dewani, Advocate for original Petitioner.

CORAM : B.P. DHARMADHIKARI &
MRS. SWAPNA JOSHI JJ.

DATE : NOVEMBER 02, 2018.

Heard Shri N.R. Patil, learned A.G.P. for the applicants who were original respondents in Writ Petition No.2587/2000. We have also heard Shri Dewani, learned counsel for non-applicants/original petitioners.

2. By inviting our attention to a Map at Annexure-V, effort of learned AGP is to demonstrate that only portion of structure erected by original petitioners can be demolished. Petitioners were running their shops on remaining portion and even

2

today continue to do so. He points out that this shop or adjacent shops looked into by this Court are encroachments on government land or public road. He also relies upon adjudication by Civil Court in a suit filed by adjacent shop owners Santosh Agrawal and his partner. Submission is, in that suit, Civil Court has found that the construction constituted encroachment and needed to be removed. It also found that it was after due notice by beat of drums.

3. He submits that after petition was amended, an appropriate reply affidavit should have been filed, however, in unfortunate circumstances, it remained to be filed.

4. Shri Dewani, learned counsel is relying upon judgment delivered by this Court on 08.12.2017, while disposing of Writ Petition No. 2587/2000. He submits that the structure was found belonging to original petitioners and removed highhandedly. He further points out that this Court has granted damages only for loss of structure.

5. Perusal of judgment shows that this Court has not allowed any damages for loss of business or on any other count. Not only this, this Court has not

3

recorded a finding on title of petitioners. Only after observing that possession was disturbed without due process of law, and a pucca structure was demolished, compensation has been awarded. Even then in paragraph no.21 of judgment, we have permitted respondents to proceed further in the matter in accordance with law.

6. Filing of Civil Suit by so called neighbours or adjudication therein, cannot operate as res-judicata in present matter and findings therein are of no use either in Writ Petition or in review jurisdiction.

7. We therefore, find prayer misconceived. Accordingly, M.C.A. is rejected. No costs.

JUDGE**JUDGE**

Rgd.