

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12726 OF 2019**

Bhupal Shankar Chougule	...Petitioner
Versus	
State of Maharashtra & Ors.	...Respondents

Mr. Sandeep S. Koregave for the Petitioner

Ms. G. P. Sonawane, A.A.G.P for the Respondent-State

Mr. Prashant Chawan a/w Ms. Chaitali Kandare i/b Navdeep Vora & Associates for the Respondent Nos. 3 and 4 (MIDC)

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 12th DECEMBER 2019

P.C. :

1 Heard learned counsel for the parties.

2 By this petition, the petitioner has impugned the order dated 23rd November 2015 passed by the learned Civil Judge, Senior Division, Ichalkaranji, Kolhapur, in Regular Civil Suit No. 202/2015, by which the petitioner's application (Exhibit 5) for grant of temporary injunction was rejected; as well as the order dated 5th August 2019 passed by the District Judge-I, Ichalkaranji, Kolhapur in Misc. Civil Appeal No. 50/2015, by which the petitioner's appeal was dismissed and order of the trial Court was confirmed.

3 Learned counsel for the petitioner submits that the petitioner is in possession and the rightful owner of Gat No. 538 admeasuring about 14.57 R at Village Talandage, Hatkanangale, Kolhapur. He submits that the suit property originally belonged to Shahu Maharaj and thereafter was in the name of Princess Indumati Rani and thereafter, the said land i.e. Gat No. 538 was transferred in the name of the Government of Maharashtra. He submits that the petitioner's father and his father's ancestors were tenants in the suit property and they were doing the work of brick kiln in the said property. He submits that if temporary injunction is not granted, irreparable loss would be caused to the petitioner, which cannot be compensated in terms of money. He further submits that the petitioner is doing the business of brick kiln, which is his only source of income.

4 Learned counsel for the respondent Nos. 3 and 4 opposed the petition. He submitted that no interference was warranted in the impugned orders. According to the learned counsel appearing for the said respondents, Gat No. 538 was acquired under the Maharashtra Industrial Development Act in the year 1999; thereafter, Award was passed and on 24th February 1999, possession of the said land was handed over by the Land Acquisition Officer to the MIDC. He submits that pursuant thereto,

the revenue entries show that the said land i.e. Gat No. 538 stands in the name of the Government of Maharashtra. He further submits that the petitioner is running a brick kiln in Gat No. 537 i.e. the land adjacent to Gat No. 538 and that the petitioner has encroached Gat No. 538 and has expanded his work of carrying out the brick kiln even on the said land. He submits that there is no document to show that the petitioner is the owner of Gat No. 538 or is in possession of the said property.

5 Perused the papers. The petitioner (original plaintiff) has filed a Regular Civil Suit No. 202/2015 for injunction and declaration in the Court of the learned Civil Judge, Senior Division, Ichalkaranji, Kolhapur. In the said suit, the petitioner filed an application being Exhibit 5 and sought temporary injunction. The said application was rejected by the learned Civil Judge, Senior Division, Ichalkaranji, Kolhapur, vide order dated 23rd November 2015. The said order reads as under :

“ORDER

- 1. Application Exh.5 is rejected.*
- 2. Application Exh.21 is hereby allowed.*
- 3. Temporary mandatory injunction is granted in favour of defendants. Plaintiff is hereby directed to remove the obstruction which is kept in the suit property.*
- 4. Costs in cause.*

5. Original order be kept with Exh.5 and its copy be kept with Exh.21.”

6 The said order was affirmed by the learned District Judge, Ichalkaranji, Kolhapur, vide order dated 5th August 2019, by which the petitioner’s appeal was dismissed.

7 It appears that the dispute pertains to Gat No. 538 which is situated at Village Talandage, Hatkanangale, Kolhapur. It appears that originally the said suit property belonged to Shahu Maharaj and thereafter to Princess Indumati Rani and after she expired in 1971. It appears that in 1999, the Government acquired the said land i.e. Gat No. 538 under the Maharashtra Industrial Development Act. On 24th February 1999, possession of the said land i.e. Gat No.538 was handed over to the Government of Maharashtra, pursuant to an Award. It appears that the petitioner is the owner of Gat no. 537 i.e. the land adjacent and abutting Gat No. 538. It also appears that the petitioner is carrying on a business of brick kiln in Gat No.537 and partly in Gat No.538. It appears that the respondent Nos. 3 and 4 had issued notice to the petitioner for removing the encroachment on Gat No.538, pursuant to which, the petitioner filed Regular Civil Suit No. 202/2015.

8 A perusal of the impugned order dated 23rd November 2015 and 5th August 2019 show that both the Courts have, in detail, considered the material on record and rejected the petitioner's prayer for temporary injunction. No perversity and illegality can be found in the said orders. Accordingly the petition being devoid of merits, is dismissed. However, the trial is expedited.

9 It is made clear that the observations made herein are *prima facie* and that the learned Judge shall conduct the case on its own merits, uninfluenced by the observations made in this order.

10 The petitioner is granted three days' time to remove all the articles belonging to him from Gat No.538, if not already removed.

11 Petition is disposed of accordingly.

12 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.