

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

Writ Petition No.2556 of 2018
(Naresh Natthu Waghmare .vs. The Sarpanch, Gram Panchayat, Yerkheda,
Dist. Nagpur and ors.)

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

Mr. U.P. Dable, Advocate for Petitioner.
Mr. A.D. Dangore, Advocate for Respondent Nos. 1 & 2.

CORAM : Manish Pitale, J.
DATED : January 07, 2019.

By this writ petition, the petitioner has challenged order dated 31.03.2017 passed by the Court of Civil Judge, Junior Division, Kamptee (trial Court) rejecting application for temporary injunction filed by him and order dated 09.04.2018 passed by the Court of District Judge, Nagpur (appellate Court) whereby appeal filed by the petitioner has been dismissed and the order of the trial Court has been confirmed.

2. The petitioner has filed a suit for declaration and permanent injunction against the respondents herein, being the Sarpanch and Secretary of the Gram Panchayat Yerkheda, tahsil Kamptee, district Nagpur. The principal grievance raised in the aforesaid suit filed by the petitioner is that the respondents have undertaken construction of a Samaj Bhawan in part of open space in the layout of the Samaj Bhushan Society. It is undisputed that the open space in question is about 18600 sq.ft. in area and that the society handed over

the same to the respondent Gram Panchayat for the purposes of development. It is the case of the petitioner that the entire aforesaid open space ought to be kept as open area for utilisation as a park for children and that construction undertaken by the respondents in part of the open space is illegal and unsustainable.

3. Along with the aforesaid suit, the petitioner filed an application for grant of temporary injunction, making a prayer for restraining the respondents from carrying out construction of Samaj Bhawan on part of the open space.

4. The respondents opposed the application for temporary injunction filed on behalf of the petitioner and pointed out that the Samaj Bhawan was being constructed only on area of 1000 sq.ft. and that a water tank in an area of about 1000 sq.ft. was already constructed. It is pointed out that the balance area of about 16000 sq.ft. was still available for use and that the grievance sought to be raised on behalf of the petitioner was not justified.

5. By order dated 31.03.2017, the trial Court rejected the application for temporary injunction filed on behalf of the petitioner by taking into consideration the documents placed on record by the rival parties. The trial Court found that the petitioner had failed to make out a *prima facie* case in his favour and that the construction of Samaj Bhawan by the respondent Gram Panchayat, being a public body, could not be *prima*

facie said to be an illegal construction. The trial Court found that the petitioner had not challenged the resolutions passed by the Gram Panchayat for construction of the said Samaj Bhawan and that it was clear from the record that even after construction of the said structure, open space of more than 16000 sq.ft. was available for children living in the vicinity. On this basis, the application stood rejected.

6. The challenge raised by the petitioner against the said order was rejected by the appellate Court vide order dated 09.04.2018, wherein the appellate Court found that the trial Court had taken a reasonable view on the basis of the material available on record and that, therefore, no interference was necessary in the order passed by the trial Court.

7. In the present writ petition, the petitioner has reiterated the contentions raised before the Courts below, contending that the construction of Samaj Bhawan undertaken by the respondents was illegal and that the open space was meant only for a park for children. It was contended that the respondent-Gram Panchayat was not entitled to undertake the aforesaid construction and that if the construction was permitted to be completed, the suit would be rendered infructuous. The respondents have appeared on caveat before this Court and opposed the present writ petition.

8. Having considered the writ petition and the

documents placed on record along with the same, it appears that the view taken by the two Courts below concurrently is reasonable and that the petitioner (original plaintiff) has failed to make out a *prima facie* case for grant of temporary injunction in his favour. It is evident that a water tank occupying about 1000 sq.ft. land was already constructed in the said open space admeasuring about 18600 sq.ft. It is also undisputed that the society itself handed over the said open space to the respondent Gram Panchayat. The Samaj Bhawan being constructed by the respondent Gram Panchayat is not for its benefit but for the benefit of the members of the society and the persons living in the vicinity. Therefore, it cannot be said to be against the interest of the members of the society and the residents of the area. Apart from this, it is also undisputed that more than 16000 sq.ft. of open space is still available for utility as a play ground for children living in the vicinity. Therefore, it cannot be said that the petitioner would suffer any irreparable loss if temporary injunction is not granted in his favour.

9. In the light of the above, the present writ petition is found to be without any merit and it is dismissed.

JUDGE