

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

WRIT PETITION NO. 4696 OF 2019

Smt. Kalpana Rambhau Bhoyar and anr.
..VS..
State of Maharashtra and anr.

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

Court's or Judge's orders

Shri R.D. Wakode, Adv. For petitioners
Ms. T.H. Khan, A.G.P. for respondents.

CORAM : Z.A.HAQ, J.
DATED : 19th July, 2019

Heard.

The petitioners/original plaintiffs have challenged the orders passed by the Subordinate Courts, concurrently rejecting her claim for temporary injunction restraining the respondents/defendants from disturbing her possession over the suit site.

After going through the impugned order, I find that the Subordinate Courts have dealt with all the relevant aspects. Suffice to it reproduce paragraph Nos. 18 and 19 of the order passed by the learned District Judge, which are as follows :

“18] In the instant matter, the suit land which is situated in the survey no. 5, is admittedly on Government 'F' class land. There is no prima facie proof about valid grant of any permission to late Shanatabai Dhande to erect the structure of her liquor shop on public land. The plaintiff's mere long possession cannot entitle them to tilt the

balance in their favour when, the said land is granted for taluka Sports complex by the defendant no.2. The defendant no. 1 has followed due procedure by issuing notice to the plaintiff for removal of the said structure of liquor shop which is prima facie an encroachment as is reflected from the resolution copy of Grampanchayat Anjangaon Bari. After receipt of notice by the plaintiffs in the month of December 2018, they had sought time for shifting the said liquor shop after obtaining permission for it but, till today they have only moved an application before defendant no. 2 on 20/5/2019 for the said permission and have not taken any further steps at all in that regard.

19] The construction of Taluka sports complex on public land is for public interest and welfare hence, the construction of security wall around it cannot be stopped for the illegal possession of the plaintiffs on the suit land. The Hon'ble Bombay High court in the case of Kundanlal Mohanlal Jaiswal (cited supra) had observed that the traders or businessman may try to take undue advantage of their influential position by getting orders or resolution from such bodies and therefore only, legislature circumscribed those powers by providing for appropriate measures by way of control. The observations of the Hon'ble Bombay High Court are applicable to the present matter squarely and therefore, illegal possession of plaintiffs which is prima facie an encroachment, cannot be protected against the interest of public at large. Thus, the plaintiffs don't have a prima facie case and the balance of convenience is not in their favour. Till today the plaintiffs had sufficient time to shift the said liquor shop from the suit land but, they had not done so. Plaintiffs can legally shift their premises elsewhere and their business will resume on the said new location therefore, they would suffer no irreparable loss if their prayer for injunction against the defendants is denied. Thus, the impugned order is perfectly legal and sound and hence, calls for no interference from this court. Therefore, I answer point no. 1 in the negative and proceed to pass following order :-

ORDER

- (I) The Misc. Civil Appeal No.36/2019
(Smt. Kalpana +1 ..vs..State+1) is hereby dismissed.

- (ii) *Inform the trial court accordingly.*
- (iii) *No order as to costs.”*

The petitioner has not been able to point out any illegality or error of jurisdiction which necessitates interference by this Court in the extraordinary jurisdiction,

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

JUDGE

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