

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

WRIT PETITION NO.4432/2018

Firoz Khan Ajij Khan

Vs.

Gram Panchayat Pipri, Tah. & District Wardha, through its Secretary 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 D.C.Chahande, Advocate for petitioner.
Shri D.R.Bhoyar, Advocate for respondent no. 3.

CORAM : A.S.CHANDURKAR, J.

DATED : August 26, 2019

The challenge raised in the present writ petition is to the order passed by the appellate Court in the miscellaneous appeal preferred by the original defendants as they were aggrieved by the grant of temporary injunction in favour of the petitioner-original plaintiff.

The petitioner has filed a suit for declaration and permanent injunction that the notice dated 30.03.2017 issued by the Gram Panchyat, Pipri (Meghe) is illegal. A further prayer has been made that the Gram Panchayat be restrained from removing the shop of the petitioner. It is the case of the original plaintiff that he is in occupation of the aforesaid area since long and that a no objection certificate to occupy that area has been issued by the Gram Panchayat. By notice dated 30.03.2017, the petitioner has been called upon to discontinue his welding shop and to remove the encroachment which was causing obstruction to the road. The trial Court was pleased to grant temporary injunction. The appellate Court by referring to the provisions of Section 53(3-A) of the Maharashtra Village Panchayat Act, 1959, held that since an alternate remedy was available to the original plaintiff, the trial Court was not justified in granting temporary

injunction.

Heard Shri D.C.Chahande, learned counsel for the petitioner and Shri D.R.Bhoyar, learned counsel for the respondent no.3.

On hearing the learned counsel, it is found that all questions sought to be raised by the petitioner have been considered and decided by this Court in its decision in *Village Panchayat Vs. Wasudeo Ramchandraji Mohod, 2014 (5) Mh.L.J. 189*. In view of the fact that the remedy under Section 53(3-A) of the said Act is available for challenging the notice dated 30.03.2017, I do not find any reason to interfere with the order passed by the appellate Court.

At this stage, Shri D.C.Chahande, learned counsel for the petitioner seeks permission to withdraw the writ petition with liberty to approach the Commissioner for invoking the remedy provided under Section 53(3-A) of the said Act.

Accordingly, the writ petition is permitted to be withdrawn. The petitioner is granted liberty to approach the Commissioner for filing an appeal under Section 53(3-A) of the said Act for challenging the notice dated 30.03.2017. If such appeal is filed within eight weeks from today, the same shall be considered on merits without going into the question of delay. All points are kept open for being raised before the Commissioner.

The writ petition is disposed of in aforesaid terms. No costs.

JUDGE

Andurkar.