

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

WRIT PETITION NO.2144 OF 2017

Rajiya Begum wd/o Abdul Sakur Solanki, Gondia

-vs-

Gondiya Nagar Parishad, Gondia, Thr. Its Chief Officer, Gondia

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

Court's or Judge's Orders.

Shri A. A. Naik, Advocate for petitioner.

Shri R. A. Gupte, Advocate for respondent.

CORAM : A.S.CHANDURKAR, J.

DATE : March 20, 2019

The petitioner who is the original plaintiff has challenged the order passed by the appellate Court dismissing the miscellaneous appeal filed by the petitioner herein and confirming the order passed by the trial Court rejecting the application for grant of temporary injunction.

According to the petitioner she is the owner of the property standing on plot No.43/4 and 43/5. Since portion of the property was Nazul land an application for regularisation of her possession was made by her. A notice dated 28/12/2015 came to be issued to the petitioner under Section 53 of the Maharashtra Regional and Town Planning Act, 1966 (for short, the said Act) for removal of the unauthorised construction. Treating that as a cause of action suit for perpetual injunction came to be filed. In that suit an application for grant of temporary injunction seeking to restrain the respondent from taking any action was moved. The trial Court rejected that application as it found that there was no prima facie case made out by the plaintiff. The appellate Court

has confirmed the said order.

Shri A. A. Naik, learned counsel for the petitioner submitted that in view of the fact that the application for regularisation of the petitioner's possession of Nazul land was made in the year 1986 and the same was pending, the respondent was not justified in issuing the notice dated 28/12/2015. According to him in view of the long standing possession of the petitioner the trial Court ought to have protected the same by granting such injunction. Great prejudice would be caused if the injunction as prayed for was not granted.

On the other hand Shri R. A. Gupte, learned counsel for the respondent supported the impugned order. He submitted that the proposal for regularisation was related to the right of the petitioner to occupy the Nazul land. The notice as issued on 28/12/2015 was with regard to the unauthorised construction erected by the petitioner. The said notice was not challenged by the petitioner in the aforesaid suit. He therefore submitted that the injunction was rightly refused by the Court.

Heard the learned counsel for the parties. The notice dated 28/12/2015 has been issued under Section 53 of the said Act. Same required removal of unauthorised construction undertaken by the petitioner. This notice is not under challenge by the petitioner and simplicitor prayer made in the suit is not to disturb the possession of the plaintiff over the suit property and not to remove the structure thereon. The application moved by the petitioner on 21/11/1986 seeking regularisation is with regard to

occupation of the Nazul land. By the impugned notice dated 28/12/2015 the possession of the petitioner would not sought to be disturbed. It related only to removal of unauthorised construction. In that view of the matter and in absence of any challenge to the said notice dated 28/12/2015 no fault can be found with the Court when it refused to grant any permanent injunction as regards removal of the structure over the suit land. Needless to state that if the petitioner is sought to be removed from the area in her occupation which is Nazul Sheet No.21, the respondent shall follow the due process of law as contemplated. This however relates to the possession of the petitioner and not with regard to the unauthorised construction for which notice dated 28/12/2015 was issued. With these observations, the writ petition is disposed of. No costs.

JUDGE