

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

Writ Petition No.267/2015

(Smt. Shobha Sharma and another V Divisional Commissioner, Amravati and others)

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

Court's or Judge's orders

Shri Akhtar Ansari, Adv for petitioners.
 Shri D.M. Kale, Adv for resp. no.3.
 Shri J.Y. Ghurde, AGP for resp. nos. 1 and 2.

CORAM : RAVINDRA V. GHUGE AND
S.M. MODAK, JJ.

DATE : 05-02-2020.

1. The petitioners have putforth prayer clauses (i) and (ii) in the petition as under :-

- “i) Call for the records of proceeding No.191/529/2014 from the file of the respondent No.1 for their perusal;*
- ii) Upon perusal of the same be pleased to set aside and quash the impugned order dated 09/09/2014 passed by the respondent No.1 in proceeding No.191/529/2014 (Annexure-17) and demand notices dated 14/10/2014 and 02-12-2014 issued by the respondent No.3, (Annexure-18-21) and dismiss the complaint made by respondent No.4.”*

2. When this matter was heard on 20-01-2015, the following order was passed -

“It is the contention of the petitioner that the impugned order has been passed without giving an opportunity of being heard to the petitioner. In that view of the matter, issue notice for final disposal returnable on 10th February, 2015.

Ad-interim relief in terms of prayer clause (iii).

Ms. N.P. Mehta, learned AGP waives notice for respondents no.1 and 2.

Hamdast granted for respondents no.3 and 4.”

3. By an order dated 15-01-2016, this petition was admitted and as this Court *prima facie* considered the effect of the agreement executed between the petitioners and respondent no.3- Municipal Council, the ad-interim relief granted earlier was continued during the pendency of the petition. It was, however, made clear that though the orders have been stayed, it would not tantamount to staying the Regular Civil Suit No.24/2013.

4. We find that in the said suit, the petitioners are aggrieved by a public auction of certain shops on the southern side. On the basis of the agreement between the parties dated 16-05-2005, a claim is put forth by the petitioners that they would be entitled to the possession of the shops.

5. In the present case, these petitioners have been levied with taxes and the Municipal Counsel desires to recover the unpaid taxes on the contention that the petitioners have already occupied the shops on the southern side. *Per contra*, the petitioners submit that after the agreement between the parties, they were relocated to the northern side as a stop gap arrangement and they agreed for the reconstruction of the shops on the southern side as the earlier construction had become dilapidated and could not be occupied.

6. After hearing this petition for quite some time, there appears to be a consensus between the parties that the suit can be expedited so as to agitate the grounds within a specific time

frame and the issue as to whether the petitioners have occupied the newly constructed shops on the southern side and whether they would be liable to pay taxes, would be considered in the said suit.

7. In view of the above, this petition is disposed off. The issue as regards whether the petitioners have occupied the newly constructed shops or whether they have been granted the possession of the said shops and whether they would be liable to pay the taxes from 31-05-2005 till 30-09-2014, would be subject to the result of the suit. The parties would be at liberty to lead evidence on these issues as well. If required, the trial Court may frame an additional issue. The ad-interim protection granted by this Court shall continue till the decision in the Regular Civil Suit No.24/2013.

8. The trial Court shall endeavor to decide the said suit as expeditiously as possible and in any case on or before 31-12-2020. The litigating side would extend their cooperation to the trial Court and any application seeking adjournment, if based on unreasonable grounds, can be rejected by the trial Court.

9. Rule is discharged.

(S.M. Modak, J.)

(Ravindra V. Ghuge, J.)