

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

WRIT PETITION NO. 1442 OF 2020

Baliram s/o Bhikaji Borkar and others

vs.

State of Maharashtra through the Secretary, Revenue and Forest Department
and others

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

Court's or Judge's orders

Shri. S. N. Nandeshwar, counsel for petitioners.
Smt. H. N. Prabhu, AGP for respondent Nos. 1 to 3.

CORAM : MANISH PITALE J.

DATED : 13/03/2020

By this writ petition, the petitioners have approached this Court challenging certain orders and notices issued by the respondent No.3 Tahsildar for removal of encroachment. It is the case of the petitioner that since litigations are pending concerning the very question, the respondent No.3 Tahsildar ought not to have issued the impugned communication/notices.

2. A perusal of the material on record indicates that the petitioners themselves had filed a suit for declaration and permanent injunction against the State, the Tahsildar and Secretary of the concerned Gram Panchayat, concerning the alleged rights of the petitioners in the land in question. It is an admitted position that the suit was dismissed by judgment and order dated 07/04/2015, thereby indicating that the rights claimed in the land in question by the petitioners were not accepted by the Competent Court.

3. It is an admitted position that the petitioners have filed an appeal challenging the aforesaid dismissal of their suit. It appears that the appeal is pending and the question of interim relief is yet to be decided by the Appellate Court.

4. The record also shows that on a complaint filed by some villagers, the Tahsildar had passed order dated 30/10/2018 against the petitioners, asking them to remove encroachment on the land in question. This order appears to have been challenged before the Civil Court. Maintainability of such a suit is also questionable, but, in any case an application for temporary injunction moved by the petitioner therein was also rejected. In this backdrop, it cannot be said that the respondent No.3 Tahsildar has committed any error in issuing the impugned notices/communication to the petitioners for removal of encroachment. The petitioners are not entitled to invoke writ jurisdiction, only on the ground that certain litigations initiated by them are pending.

5. In view of the above, the writ petition is dismissed. The petitioners would be at liberty to pursue their application for interim relief before the Appellate Court in the aforesaid pending appeal which shall be decided in accordance with law. No order as to costs.

JUDGE