

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

WRIT PETITION NO. 8265 OF 2019

Shankar s/o Punaji Pandit and others

vs.

State of Maharashtra, through Collector, Akola and others

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

Court's or Judge's orders

Smt. Prachi Joshi, counsel for petitioners.
Shri. Nikhil Joshi, AGP for respondents No.1 & 3.

CORAM : MANISH PITALE J.

DATED : 03/02/2020

By this writ petition, the petitioners (original plaintiffs) have challenged concurrent orders passed by the two Courts below refusing prayer for temporary injunction made on behalf of the petitioners.

2. It is the case of the petitioners that they have been in cultivating possession of the suit land since the year 1977. In fact, while rejecting the appeal filed by the petitioners, the District Court has observed as follows :-

“11] Perusal of record would reveal that no specific documents are filed on behalf of the appellants to substantiate their contentions that they are uninterruptedly cultivating the suit land since 1977, by encroaching upon the same. It is also significant that the appellant No.2 did not disclose about holding certain land by their father in Gat No. 19 and the same was sold on

27/08/2012, while appellant No.1 didn't disclose that he had sold his land in Gat No.61 on 05/09/2014, amounting to suppression of material facts. It is also significant that there is order of Naib Tahsildar, Murtizapur dated 16/01/2016 to remove the encroachment in Gat No.194. Similarly, as per the certificate issued by the Village Talathi dated 09/08/2017, it vindicates that in Gat No.194 there was plantation on 03/07/2017, signifying the fact that the appellants are not possessing suit land, as rightly appreciated by the learned trial Court. Moreover, documents on record would unequivocally demonstrate that the suit land is E-class land owned by the government. Therefore, unless there is any documentary evidence that the encroachment over suit land, of appellants has been regularized by the government, pursuant to the government resolution dated 09/03/2017 it cannot be said that the appellants have every right to cultivate the suit land. Consequently, by no stretch of imagination it can be said that the appellants are in lawful and peaceful possession over the suit land and any attempt to dispossess them by the respondents would entitle the Court to intervene in the form of issuing injunction, as has been solicited. As such, it can be said that no case is made out to halt the procedure initiated by the government agency to remove the encroachment over the suit land.”

3. This Court while exercising writ jurisdiction does not find any ground to entertain the present writ petition, particularly when the two Courts below have appreciated the documents presently available on record to come to a considered conclusion that the application

for temporary injunction made on behalf of the petitioners cannot be granted.

4. In view of the above, the writ petition is without any merits, hence, it is dismissed.

5. It is made clear that the observations made by this Court or the Courts below while rejecting the application for temporary injunction shall not influence the Trial Court while considering the suit filed by the petitioners on its own merit.

JUDGE