

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5659 OF 2020

Nita w/o Pravin Pawar

... Petitioner

Versus

State of Maharashtra and others

... Respondents

....

Mr. D. P. Palodkar, Advocate for the petitioner

Mr. S. P. Tiwari, AGP for respondent Nos.1 to 3, 6 and 7

Mr. V. B. Garud, Advocate for respondent No.8

....

CORAM : R. G. AVACHAT, J.

RESERVED ON : 04th FEBRUARY, 2021

PRONOUNCED ON : 17th FEBRUARY, 2021

PER COURT :-

1. The challenge in this writ petition is to the order dated 31.08.2019 passed by the Joint Civil Judge, Senior Division, Vaijapur, below Exh.5 in Regular Civil Suit No.352 of 2009 and the order dated 29.02.2020 passed by the District Judge-1, Vaijapur, in Miscellaneous Civil Appeal No.27 of 2019. By the impugned order dated 31.08.2019, the application moved by the petitioner-plaintiff for temporary injunction, came to be rejected. The said order has been confirmed by the District Judge vide order dated 29.02.2020.

2. Notice issued by the Tahsildar, Gangapur, dated 11.03.2020, directing the petitioner-plaintiff to vacate the suit property, is also challenged in this writ petition.

3. The plaintiff filed the suit, being Regular Civil Suit No.352 of 2009 for declaration to have perfected title to the property in the suit by adverse possession. Consequential relief of perpetual injunction has also been prayed for.

4. The property in the suit is the open plot admeasuring little over 8000 square feet. A residential house of the petitioner-plaintiff stands on some portion thereof. The petitioner has admittedly been in possession of the suit property. Respondent Nos. 1 to 7 are the public authorities. Respondent No.8 claims to have purchased the suit property under a registered sale-deed dated 25.04.2005. He is alleged to have been hand in gloves with respondent Nos. 1 to 7 with a view to evict the petitioner from the suit property.

5. Shri D. P. Palodkar, learned Advocate for the petitioner-plaintiff would submit that the petitioner has admittedly been in possession of the suit property. Although the two sale-deeds under which she purchased the suit property are unregistered, these documents are *prima-facie* sufficient to make out her claim of lawful entry on the property in the suit. The respondent Nos. 1 to 7 under the guise of removal of encroachment, are determined to evict the

petitioner from the suit property at the behest of respondent No.8. According to him, respondent Nos. 1 to 7 did not have authority to remove encroachment on a private property. The suit property had admittedly belonged to one Devrao Borade. He would further submit that there are statutory provisions for attachment and sealing of property for recovery of arrears of entertainment tax. No such provisions have ever been followed. The documents from the file of the revenue authorities have been fabricated one. According to the learned Advocate, since the petitioner-plaintiff has admittedly been in possession of suit property, her possession needs to be protected pending the suit. The petitioner-plaintiff has been in possession since 2002, till date.

6. Shri V. B. Garud, learned Advocate for respondent No.8, would on the other hand, submit that the petitioner-plaintiff has unauthorisedly entered on the suit property. She did not have a document of title. The documents on which the petitioner-plaintiff relies, are inadmissible in evidence. Respondent No.8 has purchased the suit property under a registered sale-deed. His name has been recorded in the Grampanchayat record. Learned Advocate supported the impugned order.

7. Learned AGP would submit that the suit property was in possession of the revenue authorities. The petitioner-plaintiff unauthorisedly entered into the possession thereof. By issuing the impugned notice dated 11.03.2020, the Tahsildar proposes to get back possession of the suit property by removing the encroachment made by the petitioner-plaintiff. He, therefore, urged for dismissal of the writ petition.

8. I have perused both the orders impugned in this writ petition. Considering the rival submissions, the appellate Court has upheld the order dated 31.08.2019 by giving sound reasons for rejecting temporary injunction application (Exh.5). Both the Courts below have exercised their discretion in refusing to grant application Exh.5. I do not find any jurisdictional error therein.

9. The suit property originally belonged to one Devrao Borade. A touring theater was being run on the suit property. The petitioner-plaintiff claims to have come into possession of the suit property under two unregistered sale-deeds dated 02.09.2003 and 17.01.2005. Both these documents are said to have been executed by Hussaini Brothers. According to the petitioner-plaintiff, Hussaini brothers had purchased the suit land from its original owner Devrao

Borade under unregistered sale-deed dated 26.10.2002. The documents on the basis of which the petitioner claims to have come in possession of the suit property are inadmissible in evidence. Those even cannot be read for collateral purpose. The document dated 26.10.2002, whereunder Hussaini Brothers are said to have purchased the suit land is an unregistered document. The said document is in the nature of a sale-deed. Although an unregistered document cannot be looked into for collateral purpose, namely to find one's possession, the same cannot be done here, since the aforesaid documents have been insufficiently stamped. The appellate Court vide its reasons in para Nos. 9, 10 and 11 of the order dated 29.02.2020, has found these documents to be suspicious one. This Court agreed with the said reasons.

10. Under the document dated 26.10.2002, Hussaini Brothers are said to have purchased 10 *gunthas* of land for consideration of Rs.9,25,000/-. It would be unconscionable that they would sell 80% of the said land for Rs.3,00,000/- to the petitioner-plaintiff. Moreover, while the suit property was sealed and taken over by the revenue authorities, the petitioner-plaintiff did not raise any objection nor did she come forward with those documents.

There are set of documents from the record of revenue authorities to indicate that touring theater (*Apsara Chitrapat Gruh*) was being run on the suit property. A sum of Rs.96,000/- was due towards the entertainment tax. On 25.08.2005, the Circle Officer sealed the theater and the land thereunder. There may be irregularity in the procedure undertaken to seal the theater. The fact, however, remains that since August – 2005 the suit property was in possession of the revenue authorities. There are further documents to indicate that the articles/instruments used for running of the theater were placed in possession of the Police Patil. Police Patil lodged the First Information Report (F.I.R.) alleging those articles to have been stolen by the Watchman.

11. Learned Advocate for the petitioner refers to the averments in the F.I.R. to submit that the petitioner-plaintiff had her property adjoining the suit property. According to him, it is not clear from any of the papers relied on by the respondents that the theater was being run on 8 *gunthas* of land. According to him, the petitioner has her house constructed in RCC. It would not come up overnight. The petitioner-plaintiff has no material to indicate her to have been in lawful possession of any portion of the suit property. On

17.01.2007, the village Talathi had informed the Tahsildar, Gangapur that the petitioner-plaintiff broke open the seal of the theater and operated the video machine. The another document on record does indicate that the village Talathi, on 21.05.2007, informed the Tahsildar that the petitioner-plaintiff has initiated a permanent construction (RCC) on the theater land. The Tahsildar had immediately informed the Gramsevak to ensure the petitioner-plaintiff would stop unauthorised construction.

12. As such, there is ample material on record to indicate that the theater was being run on the suit property. The theatre was in arrears of entertainment tax. Therefore, the theater was sealed by the Revenue Authorities. The petitioner-plaintiff broke open the seal and came into possession of the suit property. She even constructed a house thereon. While the procedure of sealing of the property was underway, the petitioner-plaintiff did not raise any objection. The same suggest that she had not been put in possession of the suit property under unregistered sale-deeds, allegedly executed by Hussaini Brothers. When the suit property was in possession of the revenue authorities by virtue of its attachment towards recovery of entertainment tax, the petitioner unauthorisedly entered into its

possession. She is, therefore, liable to be evicted pursuant to the impugned notice dated 11.03.2020 issued by the Tahsildar.

Both the Courts below have rightly refused to grant interim relief in favour of the petitioner-plaintiff. No interference is therefore called for with the impugned orders. The writ petition fails. The same is therefore, dismissed.

The Revenue Authorities are expected to remove the petitioner from the suit property, immediately.

[R. G. AVACHAT, J.]

LATER ON:

At the request of learned Advocate for the petitioner, interim relief that was continuing, to continue for a period of six weeks from today.

[R. G. AVACHAT, J.]

SMS