

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

977 WRIT PETITION NO.14002 OF 2021

BHARAT MADHUKAR RATHOD

.. Petitioner

VERSUS

THE STATE OF MAHARASHTRA

THROUGH ITS SECRETARY AND OTHERS

.. Respondents

...

Advocate for Petitioner : Mr. Mukul S. Kulkarni

AGP for Respondents / State : Mr. S.P. Tiwari

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CORAM : S. V. GANGAPURWALA AND
S. G. DIGE, JJ.

DATE : 14-12-2021

PER COURT :

1. Mr. Kulkarni, learned Advocate for the petitioner submits that the order has been passed erroneously against the petitioner for removal of encroachment from Survey no.135. According to the learned Advocate, the petitioner is in possession of Survey no.135/1. The possession of the same is pursuant to the tenancy proceedings and under the legitimate orders of the competent authorities. The petitioner has no concern with land Survey no.135 and has, at no point of time, claimed or encroached upon land Survey no.135. The order directing to remove the encroachment from land is erroneous on the face of it.

2. Whether the encroachment is made at Survey no.135 would be

a subject matter of consideration after the evidence is adduced. The Civil Court can certainly consider the *prima facie* case and arrive at a final conclusion after the parties adduce their evidence.

3. In writ jurisdiction, it would not be possible for this Court to arrive at a conclusive finding of the alleged encroachment or otherwise.

4. One of the difficulty expressed by the learned Advocate for the petitioner is that if the civil suit is filed, the petitioner is required to issue notice under Section 80 of the Civil Procedure Code. Under Sub-section 2 of Section 80 of the CPC, the petitioner can claim examination. The application can be filed by the petitioner and the same would be considered by the Civil Court.

5. In light of the above, writ petition is disposed of. No costs.

6. The petitioner may avail the alternate remedy before the Civil Court or before any other forum as may be permissible under law. In that event, all the contentions of the petitioner on merits are kept open.

(S. G. DIGE)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

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