

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

WRIT PETITION NO. 2735/2021

Ultra Tech Cement Company Ltd

...Versus...

Munna-bee Sheikh Nawab and others

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

Court's or Judge's orders

Shri M.R.Pillai, Advocate for petitioner.

Shri S.M.Ukey, Addl.GP for Respondent Nos.3 to 6

CORAM : AVINASH G. GHAROTE, J.

DATE : 28/09/2021

Heard Mr. Pillai, learned counsel for the petitioner. Mr. Ukey learned AGP appears for Respondent Nos. 3 to 6.

2] Mr. Pillai, learned counsel for the petitioner contends that in Regular Civil Suit No. 248/2019, the learned Trial Court by an order dated 28.10.2020, has rejected the application at Exh.5 filed by Respondent No.1 and 2, however, the same has been reversed by the appellate Court by the judgment dated 30.1.2021, by allowing the appeal and holding that the plaintiffs were entitled for a grant of injunction, which is the subject matter of challenge in the present petition.

3] Mr. Pillai, learned counsel for the petitioner,

submits that the learned appellate Court was wrong in rendering a finding that the original plaintiffs/Respondent Nos.1 and 2 were granted a lease of land of Gat No. 205/1 admeasuring 2 hectares, situated at village Bakhardi and that under it, the plaintiffs were in possession. He submits that the land is Government land and the plaintiffs are in fact encroachers over the same and therefore have no legal right to continue in possession. He further submits that the petitioner has been granted right to commence mining operation over the land admeasuring 1059.59 hectares, which includes the land in question, and therefore, is entitled to commence and continue the mining operation upon the same also. He further submits that the findings rendered by the learned appellate Court are not supported by the reply filed by the respondent Nos. 3 to 6, and therefore, the status of the respondents 1 and 2 continues to be that of an encroacher and therefore, they are not entitled to any injunction.

4] Perusal of the impugned judgment, indicates that in para 17 thereof, a categorical finding has been recorded that the original plaintiffs have been granted a patta in respect of 2 hectares, which is land bearing Gat No. 205/1 of village Bakhardi and the original plaintiffs are in cultivating possession of the same. The recording of such finding, is based upon the admission by the respondent nos. 3

to 6 in their written statement-cum-reply filed before the trial Court.

5] A perusal of the written statement of respondent nos. 3 to 6/defendant nos.1 to 4 before the trial Court, indicates that a categorical admission was given by the authorities that the predecessor of the plaintiffs viz. Sheikh Ibrahim had applied to the Tahsildar, for grant of land on lease, which application was accepted and the process for grant of lease was completed. Thus the grant of land of Gat No. 205/1 admeasuring 2 hectares to the predecessor of the plaintiffs is an admitted position. The disputed contention is that in the said lease, instead of writing the name of village Bakhardi, the name of village Bibi was inserted. The communication dated 22.12.2020 written by the Talathi, Korpana, to the Tahsildar, Korpana (with list Exh.30) before the trial Court indicates that no such Gat Number 205 or 205/1 exists in the village Bibi. Applications for correction of the name in the said patta from Bibi to Bakhardi have been consistently made from 4.9.1982 onwards, which are pending. The question whether a patta has been granted or not and whether it is in respect of Survey No. 205/1 of Mouza Bakhardi or Bibi, is now subject matter of trial before the Civil Court in a suit pending before it. It is not a disputed position, that the plaintiffs are in possession of the property through their predecessor since 1979, which is an admitted

position by defendant nos. 1 to 4, who are the authorities, in view of which, the plaintiffs clearly are entitled to continue that possession unless and until they are dispossessed without following due process of law, which in fact is the nature of injunction granted by the learned appellate Court. The admission given by the authorities in this regard, in my considered opinion, clearly justify the grant of such an order, considering the long standing possession of the plaintiffs and their predecessor since 1979. In that view of the matter, I am not inclined to interfere with the impugned order. The petition therefore is without any merit and is accordingly dismissed.

6] Mr. Pillai, learned counsel for the petitioner makes a request to expedite the suit, before the trial court, raising a grievance that because of location of the property, the mining operations are being adversely affected, considering which the trial Court is directed to decide the suit before it as expeditiously as possible and in any case within a period of one year from today.

JUDGE