

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

WRIT PETITION (WP) NO.3287 OF 2020

PETITIONERS

- : 1. Ravi S/o. Gopalsingh Thakur,
Aged 50 years, Occu. Business
- (Orig. Def. Nos.5 and 6)** 2. Mehtabsingh S/o. Tulshiramji Thakur,
Aged 52 years, Occu. Business,
No.4 and 5 R/o. Tilak Nagar, Shahr
Ward, Tumsar, Tah. Tumsar, Dist.
Bhandara.

--VERSUS--

RESPONDENTS

- : 1. Mahadeo S/o. Bhayalal Katare,
Aged 65 years, Occu. Business,
(Orig. Plaintiff) R/o. Gandhi Nagar, Tumsar, Tah.
Tumsar, Dist. Bhandara.
- (Orig. Def. No.1)** 2. State of Maharashtra,
Through Collector of Bhandara.
- (Orig. Def. No.2)** 3. Sub-Divisional Officer, Tumsar,
- (Orig. Def. No.3)** 4. The Tahsildar, Tumsar.
- (Orig. Def. No.4)** 5. Deputy Supdt. Of Land Record, Tumsar,
Tah. Dist. Bhandara.

Shri. K. S. Motwani, Advocate for the Petitioners
 Shri. V. B. Gawali, Advocate for the Respondent No.1
 Ms. T. H. Khan, AGP for the Respondent Nos.2 to 5.

CORAM : **N. B. SURYAWANSHI, J.**

DATE : **08/07/2021**

JUDGMENT

Hearing was conducted through Video
 Conferencing and the learned counsel agreed that the audio

and visual quality was proper.

2. **RULE.** Rule made returnable forthwith. Heard finally with the consent of the parties.

3. By this petition, filed under Article 227 of the Constitution of Indian, the Petitioners challenge the order dated 26.10.2020 passed by the learned Principle Judge, District Bhandara in Misc. Civil Appeal No.12 of 2020, thereby granting interim injunction in favour of the Respondent No.1.

4. For the sake of convenience, the Petitioners are referred as 'the Defendant Nos.5 and 6' and the Respondent No.1 is referred as "the Plaintiff.'

5. The Respondent No.1 - the Plaintiff filed Regular Civil Suit No.154 of 2019 for a declaration that the construction work started by the Defendant Nos.5 and 6 towards the eastern side of the suit property is illegal. A permanent injunction was sought against the Defendant Nos.5 and 6 or anybody claiming through

them from continuing with the illegal construction work adjacent to the suit property.

6. In short, it is the case of the Plaintiff that he is in peaceful possession of the suit property since the year 1972 and he is running 'Manish Bhojnalay'. The suit property was given to him on lease by the Respondent No.4 - the Tahsildar, Tumsar (the Defendant No.3). The lease was extended from time to time and after the last extension from 01.08.1993 to 31.07.1997, though no extension was granted, the lease amount is being accepted from the Plaintiff. His application for permanent lease is pending. The Defendant Nos.5 and 6 started construction by erecting the columns on the open space towards the eastern wall of the Plaintiff's Bhojnalay without leaving any space and without obtaining permission of the Tahsildar and the Municipal Council, Tumsar. Hence, the construction is illegal. On the eastern wall of the Plaintiff, there are ventilation windows for getting light and air and if the Defendant's construction is allowed, then he will be deprived from his

right to take light and air. The Defendant No.6 is an elected member of the Municipal Council, Tumsar, and hence, he is bringing pressure on the Municipal Council, and therefore, no action is being taken against him, in-spite of the written objection filed by the Plaintiff. Alongwith the plaint, the application at Exh-5 seeking temporary injunction against the Defendants was filed.

7. The Defendant Nos.5 and 6 resisted the suit by filing written statement and denied the contentions of the Plaintiff. They claimed that the Defendant No.5 is in possession of the land bearing Sheet No.7-D, City Survey No.19/1-A, Plot No.25 area $30 \times 21 \frac{1}{2}$ Sq. Ft. at Mouza Bose Nagar, Tumsar, Tah. Tumsar, District Bhandara since the year 1972. He obtained permission from the Municipal Council, Tumsar in the year 1993 to construct the Shop, therefore he is in peaceful possession of the said property. He constructed the Shop over the said property in the year 1993. In 2001, he received notice that he has encroached the land belonging to the Municipal Council, Tumsar. He accordingly deposited the

fine amount with the Government. The constructed old wall of his Shop collapsed due to heavy rain, he was ordered to repair his Shop, accordingly he is carrying out the construction work by leaving adequate space and by informing the Municipal Council, Tumsar. The Shop is only source of livelihood. Hence, he prayed for dismissal of suit.

8. The trial Court rejected the application below Exh-5 observing that both the Plaintiff and the Defendants are encroachers on the public land and their respective lease are not extended, there is no measurement of suit property brought on record, hence, the exact encroachment is not on record, the Plaintiff is claiming more land than the lease.

9. Being aggrieved by the rejection of the application below Exh-5, the Plaintiff filed Misc. Civil Appeal No.12 of 2020 and the Appellate Court after hearing the parties allowed the Misc. Civil Appeal and granted injunction in favour of the Plaintiff. The

Defendants have therefore challenged the said order in this Writ Petition.

10. Heard the learned Advocate for the Petitioners- the Defendant Nos.5 and 6, the learned Advocate for the Respondent No.1 - the Plaintiff and the learned Assistant Government Pleader for the Respondent Nos.2 to 5.

11. The learned Advocate for the Petitioners - the Defendant Nos.5 and 6, vehemently submitted that the Appellate Court has committed an error in allowing the application under Exh-5 ignoring the fact that the Respondent No.1 - the Plaintiff claims to be in possession of more area than the initial allotment. According to him, the trial Court has rightly rejected the temporary injunction application of the Plaintiff. He further submitted that the impugned order passed by the Appellate Court is unsustainable. According to him, without giving measurement on record, the Appellate Court erred in coming to the conclusion that the Plaintiff is in possession of 76.07 Sq. Mtr. Area. Further

submission is that the Plaintiff being encroacher is not entitled for injunction in his favour.

12. The learned Advocate for the Respondent No.1 original Plaintiff supported the impugned order. The learned AGP submitted that the appropriate orders as per record may be passed. I have gone through the petition and the documents annexed thereto.

13. The application for interim injunction is to be decided by taking into consideration whether the Plaintiff has established a *prima facie* case, whether the balance of convenience lies in favour of the Plaintiff and whether the Plaintiff would suffer irreparable loss, if the injunction is not granted in his favour. On going through the documents placed on record, it is clear that both the Plaintiff and the Defendant No.5 have made encroachment on the public land. As per encroachment register, the Plaintiff is encroacher of 57.72 Sq. Mtr. Area since the year 1987, and thereafter, extract produced on record by him shows that he is in possession of 76.07 Sq.

Mtr. Area. The photos placed on record by the Plaintiff show that there are 3 windows to the building of the Plaintiff towards the Defendant's side. At the time of construction of windows, the Defendant No.5 did not raise any objection. It also appears from the record that the Defendants are trying to raise construction without leaving any space from the eastern wall of the Plaintiff. It is clear from the record that if the Defendants are permitted to carry out the construction undertaken by them, there is likelihood of 3 windows of the Plaintiff being closed and the Plaintiff would be deprived of his right to take air and light from the said windows. Thus, the Plaintiff has made out a *prima facie* case in his favour, the balance of convenience also lies in his favour. The plaintiff has also demonstrated that irreparable loss would be caused to him, as he may lose his right to take air and light from the said windows, in case the injunction is not granted in his favour

14. The Appellate Court has taken into consideration all the relevant documents and pleadings

of the parties. The reasoning adopted by the Appellate Court is sound and proper. The Appellate Court has rightly exercised discretion in favour of the Respondent No.1- the Plaintiff. There is no merit in the contentions raised by the Petitioners. The Petitioners have failed to make out a case to exercise extra ordinary writ jurisdiction in their favour. Hence, the following order :

ORDER

- i) Writ Petition No.3287 of 2020, is **dismissed**.
- ii) The trial of Regular Civil Suit No.154 of 2019, is expedited.

Rule is discharged with no order as to costs.

JUDGE