

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 1984 OF 2021

- 1) Nilesh s/o Ashokrao Kapile,
Aged about 57 years,
Occupation – Business,
Prop. Nilesh Cycle Stores.
- 2) Uttam s/o Domaji Choudhari,
Aged about 58 years,
Occupation – Business,
Prop. Jay Ambe Hair Dressers.
- 3) Mahadeo s/o Domaji Choudhari,
Aged about 55 years,
Occupation – Business,
Prop. Anil Hair Dressers.
- 4) Murli s/o Mahadeo Pawar,
Aged about 50 years,
Occupation – Business,
Prop. Murli Cycle Stores.
- 5) Mansingh s/o Narayanrao Kapile,
Aged about 55 years,
Occupation – Business,
Prop. Kapile Pan Centre.
- 6) ~~Pandurang Chandrabhan Gulhane,~~
~~Aged about 65 years,~~
~~Occupation – Business,~~
~~Prop. Shubhecha Restaurant.~~
- 6a) Asha wd/o Pandurangji Gulhane, | - (Amended as per
Aged about 60 years, | order dt. 5-10-2021)
Occupation – Housewife,
R/o Vaidya Nagar, Behind S.T.
Division Office, Arni Road, Yavatmal.
- 6b) Sau. Vaishali Deepak Rajgure,
Aged about 43 years,

- Occupation – Housewife,
R/o Indraprastha Nagri, Civil Lines,
Yavatmal.
- 6c) Sau. Rekha Chandrashekar Gulhane,
Aged about 42 years,
Occupation – Housewife,
R/o. Court Quarter, Righty Building,
Behind Commissioner Office,
Vrundavan Colony, Amravati.
- 6d) Ku. Anjali d/o Pandurangji Gulhane,
Aged about 40 years,
Occupation – Agriculturist,
R/o Vaidya Nagar, Behind S.T. Division
Office, Arni Road, Yavatmal.
- 7) Mahadeo s/o Suryabhan Suryakar,
Aged about 65 years,
Occupation – Business,
Prop. Suryakar Hair Dressers.
- 8) Abhay s/o Wasudeorao Gawande,
Aged about 50 years,
Occupation – Business,
Prop. Jai Bhavani Cycle Stores.
- 9) Kasturchand s/o Champalal Setiya,
Aged about 75 years,
Occupation – Business,
Prop. Lalit News Paper Agency.
- 10) Laxmichand Champalal Setiya,
Aged about 72 years,
Occupation – Business,
Prop. Lalit Book Depot.

All R/o Yavatmal, Tahsil and District
Yavatmal, having their business
address Near Reform Club, Bus Stand
Chowk, Yavatmal, Tahsil and District
Yavatmal.

.... **PETITIONERS**

VERSUS

Nagar Parishad, Yavatmal,
through its Chief Officer,
Nagar Parishad, Yavatmal,
Tahsil and District Yavatmal.

.... **RESPONDENT**

Mr. V.N. Patre, Counsel for the petitioners,
Mr. V.D. Darne, Counsel for the respondent.

CORAM : **ROHIT B. DEO, J.**
DATED : **22nd FEBRUARY, 2022**

ORAL JUDGMENT :

Heard. **Rule.** With consent, the petition is finally heard.

2. The petitioners are plaintiffs in Regular Civil Suit 21/2021 which is instituted seeking permanent injunction restraining the Nagar Parishad, Yavatmal from disturbing the possession of the plaintiffs over the suit property, which is described as portion of Plot 8/12/2, Nazul Sheet 37/B. It is discernible from the prayer clause that the plaintiffs claim to be tenants in possession and the injunction is sought on the premise that the plaintiffs are perceived to be encroachers.

3. The plaintiffs preferred an application for temporary injunction under Order XXXIX Rules 1 and 2 of the Civil Procedure Code which the learned 5th Jt. Civil Judge (Junior Division), Yavatmal rejected vide order dated 16-3-2021.

4. Dissatisfied, the plaintiffs preferred Miscellaneous Civil Appeal 3/2021 which the learned Principal District Judge, Yavatmal rejected vide judgment dated 07-5-2021.

5. Aggrieved, the plaintiffs are invoking writ and supervisory jurisdiction.

6. Before I advert to the rival contentions, I would be necessary to broadly note the substratum of the suit plaint and the response of the Nagar Parishad.

(a) The plaintiffs claim to be in occupation and in possession of certain portion of land belonging to the Reform Club, which Club is not a party to the suit. The plaintiffs claim to be tenants of the Reform Club and to have paid the property tax to the Nagar Parishad.

(b) The plaintiffs then refer to the decision in Second Appeal 129/2011 and claim that while disposing of the second appeal, liberty was reserved to the plaintiffs to institute separate suit, in the event, there is a threat of dispossession in future.

(c) The plaintiffs then claim that wrongly assuming that the land in possession of the plaintiffs is Government land, the Nagar Parishad has served notices to the plaintiffs for removal of the alleged encroachment, and the said action is motivated and at the dictates of

politicians. The plaintiffs claim that land admeasuring 7875 square feet assigned Plot 8/12/2 which is part of Nazul Sheet 37/B is allotted by the Government to the Reform Club which has leased the area reserved for parking to the plaintiffs, who have constructed temporary sheds and are carrying on business therefrom.

7. In response, the Nagar Parishad contended thus :

(a) The Nagar Parishad asserts that the claim of the plaintiffs to be the tenants of Reform Club is false, and as a fact, the plaintiffs have encroached upon land owned by the Government. The Nagar Parishad asserts that the plaintiffs have attempted to mislead the Court by conveniently referring to selective portions of the judgment of the High Court. The Nagar Parishad contends that the claim of the plaintiffs to be tenants of the Reform Club is negated by the civil Court and then by the High Court, which fact is not disclosed. The Nagar Parishad categorically denied that the statutory notice is issued under political pressure. The contention of the Nagar Parishad is that the plaintiffs are habitual defaulters against whom action for removal of encroachment was initiated even in the past and the plaintiffs have on every occasion taken forcible possession and restarted the business on the land owned by the Government. The Nagar Parishad asserts that the action of removal of encroachment is in larger public interest.

(b) The Nagar Parishad contended that since Reform Club, which according to the plaintiffs is the landlord, is not impleaded, the suit is not maintainable. The Nagar Parishad then contended that the plaintiffs had instituted Regular Civil Suit 40/2000 seeking similar injunction, which came to be dismissed by the trial Court and Regular Civil Appeal 53/2004 was dismissed by the learned District Judge, Yavatmal. The Nagar Parishad contended that the plaintiffs preferred Second Appeal 129/2011 which the High Court dismissed *inter alia* holding that the plaintiffs could not prove their status as tenants.

(c) Nagar Parishad then asserts that notwithstanding the dismissal of the second appeal, the plaintiffs preferred Regular Civil Suit 92/2015 seeking permanent injunction which the learned trial Court dismissed on 02-4-2018 and the plaintiffs failed to prefer the appeal within the period of limitation. The Nagar Parishad contended that only as a tactical ploy and to keep the unmerited issue alive, the plaintiffs preferred an appeal along with an application for condonation of delay and in the said appeal temporary injunction is sought, which is pending adjudication. The Nagar Parishad asserts that the plaintiffs did not deliberately disclose, and rather suppressed, the previous litigations.

(d) The Nagar Parishad contended that the encroached land is situated at the Bus Station Square and the traffic movement is heavy.

Several complaints were received from the citizens that the smooth movement of the traffic is obstructed by the encroachment and several accidents have occurred. The Nagar Parishad asserts that from the boundary of the main road, no construction activity is permissible on any land located at a distance of six meters, and the plaintiffs are obstructing the smooth movement of traffic by keeping their goods and merchandise on the public street.

8. The learned trial Judge considered the material on record threadbare and it would be apposite to note certain findings recorded. The learned trial Judge notes that irrefutably the suit property is the parking space allotted by the Government to Reform Club. The learned trial Judge then found that contrary to the claim of the plaintiffs to be tenants of Reform Club, there is no material whatsoever placed on record to indicate tenancy. The learned trial Judge then considered the submission that the Nagar Parishad could not have invoked the provisions of Section 179 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (Act) and holds that the Nagar Parishad was more than justified in invoking the said provision since the encroachment is on the parking space allotted by the Government to the Reform Club and the terms and conditions of the allotment mandate that any development activity on the land allotted

shall be done only with the prior permission of the Nagar Parishad. The learned trial Judge has held, and rightly so, that while certain land is certainly allotted on lease to Reform Club, the ownership continues to vest with the Government.

The learned trial Judge holds while concluding the order, that the plaintiffs failed to establish lawful possession and that it would be impermissible to injunct the Nagar Parishad from discharging its statutory duty.

9. The learned Principal District Judge re-appreciated the material on record and held that a local authority cannot be enjoined from exercising statutory power of removal of encroachment. The learned Principal District Judge then referred to Regular Civil Suit 40/2000 instituted by the plaintiffs against the State Government in which the Reform Club intervened. The learned Principal District Judge noted that the suit was dismissed and the first appellate Court confirmed the dismissal by dismissing Regular Civil Appeal 53/2004. The learned Principal District Judge noted that the plaintiffs did not produce on record the judgment and decree in Regular Civil Suit 40/2000 nor did the plaintiffs disclose the judgment in Regular Civil Appeal 53/2004. The learned Principal District Judge then noted that while deciding Second Appeal 129/2011, the High Court has observed that the issue as

to whether the plaintiffs prove that they are tenants of Reform Club, is answered in the negative. In view of the findings rendered in the said litigation, the learned Principal District Judge held that the plaintiffs are not the tenants of the Reform Club.

The learned Principal District Judge noted that the land in question admeasuring 7875 square feet was allotted by the State Government to the Reform Club without charging premium, for a licence fee of Rs.2/- (Rupees Two) per annum, only for vehicle parking of the members and Clause-5 of the allotment letter mandates that prior permission of the Nagar Parishad is necessary for undertaking any development. The learned Principal District Judge then noted that Clause-8 of the allotment letter mandates that area admeasuring 12 square meters in width shall be kept open from both the sides of Darwah and Dhamangaon Road, as access approach. The learned Principal District Judge also noted Clause-9 of the allotment letter which prohibits construction within 15.86 meters of the building line from the center of the road. Further consideration by the learned District Judge of the implication of the said clauses reads thus :

“18. The said Clause Nos. 5, 8 and 9 of the letter clearly shows that the Reform Club has area of parking place for parking vehicles of its members and it has to be kept open and no construction is to be made on it. It is not the case of the plaintiffs that they have obtained lawful permission from the defendant to construct temporary shed on the area of parking place. Nor the plaintiff has produced any sanctioned

plan or order of the Municipal Council to show that they have received permission to construct temporary shed on the area of parking place. The defendant Municipal Council has every right to demolish the illegal and unlawful construction done by any person on his property or on the property of other person. The Municipal council being a local body has every right to issue notice under section 179 of the Municipalities Act in view of the above clause Nos. 8 and 9 of the said letter to the plaintiffs to remove the encroachment from the parking place.

19. It is clear that the plaintiffs have done encroachment on the parking areas which was allotted by the government to the Reform Club for the purpose of parking only. The ownership of the said land belongs to the government.

20. In the absence of any legal rights, the plaintiffs encroachers cannot be permitted to use the place of parking of vehicles for their business. Moreover, the plaintiffs have failed to prove any legal rights so they cannot be protected only on the basis of long settled possession when the said place is reserved for public purpose. The plaintiffs did not give any explanation as to why they have not made the Reform Club as a party to the suit. It is apparent that the grievance of the plaintiffs cannot be compared with the public injury and in the absence of even a prima facie right in their favour, they are not entitled to grant of temporary injunction.”

As noted supra, the learned Principal District Judge dismissed the appeal.

10. The learned Counsel for the plaintiffs Mr. V.N. Patre would reiterate the submissions which did not find favour with the Courts below. Mr. V.N. Patre would argue that the notice for removal of encroachment is contrary to the provisions of Section 179 of the Act

since the encroachment is not on Government land. Mr. VN. Patre would argue that the plaintiffs are engaging in business on the open space allotted to Reform Club for parking purpose, and that the action for removal of encroachment is politically motivated and the Nagar Parishad intends to construct a shopping complex after dispossessing the plaintiffs. Mr. VN. Patre would then argue that since it is the Reform Club which alone could have had any grievance, the Nagar Parishad could not have taken recourse to Section 179 of the Act. While not argued specifically, the other contentions which I notice from the memo of petition are, that (i) no measurement report is produced on record, (ii) neither the Reform Club nor the Government has issued any notice to the plaintiffs seeking possession, and (iii) the finding recorded by the Courts below that the State Government is the owner, is erroneous and that the plaintiffs are entitled to protection in view of the provisions of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (Act of 2014).

11. The learned Counsel Mr. VD. Darne for the Nagar Parishad invited my attention to the affidavit-in-response dated 10-8-2021 which is sworn by the Chief Officer of the Municipal Council, Yavatmal. Mr. VD. Darne would submit that concurrent findings are recorded by the Courts below. Mr. VD. Darne would submit, by inviting my attention to

the findings recorded in the earlier round of litigation, that the plaintiffs are held not to be tenants of Reform Club and that in the present round of litigation, both the Courts have concurrently held that the encroachment is on land allotted to Reform Club for purpose of parking, which allotment was subject to several restrictions and conditions. Mr. V.D. Darne would submit that injunctive relief is an equitable relief and the fact that the plaintiffs suppressed the findings recorded in the earlier litigation, and indeed attempted to mislead the Courts by making a selective reference to the observations of the High Court, *ipso facto* disentitles the plaintiffs from any relief in equity. Mr. V.D. Darne invited my attention to certain paragraphs in affidavit-in-response which read thus :

“8. It is most humbly and respectfully submitted that since the structure of the petitioners is on road margin the answering respondents have every right to remove the same to avoid accidents, congestion on the main square so also because of the parking of vehicles in front of the said shops of the petitioners the traffic is obstructed and on that count also the answering respondent is justified in proceeding further to remove encroachment by the petitioners on the public street.

9) It is most humbly and respectfully submitted that the petitioners on one hand claim that they are the tenant of the said Reform Club on the land allotted to the said Reform Club for parking purpose and on the other hand, claim that they are not bound by the conditions imposed in the allotment, specifically when the ownership stands in the name of the Government, no construction to be carried over it, 12 meter width be kept open from both the sides of Darwha and Dhamangaon Road as access road and no construction is allowed to be done within 15.86 meters of the building line

from the center of the road. In view of this, it is very much clear that the unauthorised construction of the petitioners is liable to be removed and the interim order dated 21-6-2021 needs to be vacated.

11) It is most humbly and respectfully submitted that the petitioners have not made out any case much less prima facie case for grant of injunction. It is further most humbly and respectfully prayed that the petitioners' unauthorised encroachment is on the side margin of the road and not 30 feet away from the main road as allegedly claimed by the petitioners. It is most humbly and respectfully submitted that balance of convenience is not in favour of the petitioners and no irreparable losses would be caused to the petitioners if the injunction is not granted. It is further submitted that bare perusal of the main prayer of this petition further shows that the petitioner has not sought any injunction. It is submitted that in the facts and circumstances of the case, no case is made out by the petitioners for quashing and setting aside of the orders passed by both the courts below. It is submitted that by one way or the other the petitioners are prolonging the proceedings to protect their illegal encroachment and hence, the present petition is liable to be dismissed."

12. I have bestowed due consideration to the submissions canvassed at the bar and the reasons recorded by the Courts below for refusing injunctive relief. In my considered view, the plaintiffs are not entitled to any relief in equity for reasons more than one.

13. I have no doubt in my mind that the plaintiffs suppressed material facts and did not approach the civil Court with clean hands and injunctive relief could have been rejected by the Courts below on this short ground. Perusal of the plaint reveals that there is not even a

word in the plaint which can be construed as a disclosure of the fact that in the earlier round of litigation, the claim of tenancy is specifically rejected. Indeed, while there is a vague reference in paragraph 4 to certain observations of the High Court in Second Appeal 129/2011, as rightly submitted by Mr. V.D. Darne, the reference is selective and misleading. Notably, the fact that the plaintiffs suppressed the judgment and decree of the civil Court and the confirmatory judgment in appeal, is self speaking.

It would be relevant to note certain findings recorded in Regular Civil Suit 40/2000 since the judgment and decree which was suppressed in the proceedings below is placed on record of this petition by the plaintiffs. Regular Civil Suit 40/2000 was instituted by the plaintiffs seeking injunction and declaration on the basis that the plaintiffs are the tenants of Reform Club. It is clear that the trial Court recorded a finding that the plaintiffs failed to prove that they have been leased out the suit land by Reform Club, which intervened in the suit and was impleaded as defendant 5. It is true that the civil Court also held that the Reform Club did not prove that the plaintiffs are encroachers over the Government land, but then, the said finding is recorded on the ground that the Reform Club did not adduce evidence to substantiate its contentions. The finding is qualified with the observation that if the plaintiffs are encroachers of Government land, it

is the duty of the Government to remove the encroachment, if deemed fit. The said finding will also have to be appreciated in the context of the admission of the witness examined by the plaintiffs that no action for removal of encroachment as such is initiated, which persuaded the trial Judge to hold that at present there is no apprehension of dispossession, and therefore, no cause of action. However, the finding that the plaintiffs are not the tenants of Reform Club is upheld by the appellate Court while dismissing Regular Civil Appeal 53/2004. Similarly, while dismissing Second Appeal 129/2011, this Court has also noted that a finding is recorded that the plaintiffs failed to prove that they are tenants of Reform Club.

Be it noted, that the Nagar Parishad was not a party to the litigation referred to supra, and a reference is made to the said litigation only to emphasize the dishonest conduct of the plaintiffs who have based the suit claim on the assertion that they are tenants of Reform Club without making any disclosure of material and relevant facts.

14. Yet another suppression indicating a sharp practice is the failure of the plaintiffs to disclose that apart from the litigation referred to supra, the plaintiffs instituted Regular Civil Suit 92/2015 seeking a similar injunction against the State Government and its officers, which

came to be dismissed by the Joint Civil Judge (Senior Division), Yavatmal vide judgment dated 02-4-2018.

15. The submission of Mr. V.N. Patre that the Nagar Parishad is not authorised to initiate the action of removal of encroachment, deserves outright rejection. Irrefutably, the encroachment is on Government land, albeit allotted to Reform Club on leasehold right for parking purpose. Even if the submission of the learned Counsel Mr. V.N. Patre that Section 179 of the Act to which the notice of removal of encroachment refers, is not applicable, is accepted *arguendo*, there are ample provisions in the Act which enable and indeed obligate the local authority to remove encroachments on Government land. Similarly, any construction effected without the permission of the local authority, is liable to be removed. It is obvious that the structures from which the plaintiffs are allegedly engaged in business are, unauthorised structures, erected on Government land.

16. In this view of the matter, the Courts below are right in observing that if injunctive relief is granted to the plaintiffs, the Nagar Parishad shall be prevented from discharging statutory duties.

17. The reference to the Act of 2014 which is enacted to protect the

rights of urban street vendors and to regulate street vending activities, is totally misplaced. The plaintiffs, on their own showing, cannot be considered as either mobile vendors or street vendors within the meaning of Section 2(1)(d) or (l) of the Act of 2014. Even *de hors* the said aspect, perusal of the plaint reveals that the plaintiffs did not assert any right on the basis of the provisions of the Act of 2014, and it would, therefore, be wholly unnecessary, to consider such a submission which is raised for the first time in the petition.

18. The petition is dismissed with costs. The petitioners shall pay to the Nagar Parishad costs of Rs.10,000/- (Rupees Ten Thousand), within the next thirty days, failing which the same shall be recovered by the Collector, Yavatmal as arrears of land revenue.

JUDGE

adgokar