

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

Writ Petition No.2447/2021

B.T.B. Sabji Bhaji Vyapari Association through its President & Anr.

Vs.

Municipal Council, Bhandara through its Chief Officer, Bhandara & Anr.

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

Court's or Judge's Orders

Shri M.P. Khajanchi, Advocate for the Petitioners.
Shri N.B. Kalwaghe, Advocate for Respondent No.1.
Shri D.V. Chauhan, Advocate & Shri H.A. Khedikar, Advocate for Respondent No.2.

CORAM : A.S. CHANDURKAR & SMT. M.S. JAWALKAR, JJ.

DATE : 10th MARCH, 2022.

01] In this writ petition, the petitioners have prayed that Municipal Council, Bhandara as well as the respondent No.2 be restrained from collecting/recovering the market fees from the petitioner No.1 – Association. The cause of action for seeking this relief is stated in paragraph 8 of the writ petition, wherein it is pleaded that the Officers of the Municipal Council had informed the staff of the respondent No.2 – Contractor that market fees would be recovered from the petitioner No.1. On 30th April, 2020 while issuing notice in the writ petition, *ad interim* relief in terms of prayer Clause (b) was granted. By that *ad interim* relief, the respondents were restrained from collecting/recovering the market fees from the petitioner No.1.

02] The learned counsel for the petitioners submits that RCS No.61/2020 has been filed by the petitioner No.1 against the respondents seeking a declaration that B.T.B. market is a private market and the defendants – respondents herein be restrained from collecting market fees from the Association. Along with that suit, an

application for grant of temporary injunction has been filed. It is submitted that the said civil suit is pending before the trial Court and the application for grant of temporary injunction is under consideration. It is submitted that on account onset of the Covid-19 pandemic as there was a threat that the market fees would be collected from the petitioner No.1, the present writ petition has been filed. The petitioner No.1 would have an adjudication of its rights in the civil suit. It is, therefore, prayed that in view of aforesaid, the writ petition could be disposed of by permitting the parties to have their rights adjudicated before the Civil Court. The further prayer made is to continue the *ad interim* relief for a short period to enable the petitioners to seek such relief before the trial Court.

03] The prayer for continuation of *ad interim* relief is opposed by the learned counsel for the respondents on the ground that this Court had not examined the merits of the case as urged by the learned counsel for the petitioners while granting the *ad interim* relief. The petitioners were not entitled to any relief in their favour especially since the Municipal Council was legally justified in seeking recovery of the market fees from the petitioner No.1.

04] Considering the fact that RCS No.61/2020 preferred by the petitioner No.1 is pending before the trial Court and the application below Exh.5 is also under consideration, the following order is passed:

ORDER

- i. The civil suit filed by the petitioner No.1 being RCS No.61/2020 can be pursued by the petitioner No.1 before the trial Court. It is open for the plaintiffs therein to seek temporary injunction as prayed for below Exh.5.

- ii. Considering the fact that the *ad interim* relief granted in the writ petition has been operating almost two years, the same is continued for a period of 15 days from today.
- iii. It is made clear that the trial Court shall consider the prayer for grant of temporary injunction on its own merits without being influenced by the grant of or continuation of the *ad interim* order dated 30th April, 2020.

The writ petition is disposed of with no order as to costs.

(SMT. M.S. JAWALKAR, J.)

(A.S. CHANDURKAR, J.)

Vijay