

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

WRIT PETITION NO. 3949 OF 2022

Smt. Sitabai Omprakash Modi and another

vs.

State of Maharashtra and others

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

Court's or Judge's Orders.

Mr. G. N. Khanzode, Advocate for petitioners.
Mr. K. L. Dharmadhikari, AGP for respondent Nos.1 to 3.

CORAM : MANISH PITALE J.

DATE : 15/07/2022

Heard learned counsel for the petitioner.

2. By this petition, the petitioners have challenged concurrent orders by the two Courts below rejecting the prayer for grant of temporary injunction during the pendency of suit.

3. The petitioners have filed a suit for permanent injunction against the respondent State authority, claiming that the respondents need to be restrained from taking possession of the suit property. It is claimed that the petitioners, who are owners of adjoining piece of land, have been in possession of the suit property since the year 1969.

4. In the said suit an application for temporary injunction was moved by the petitioners, reiterating that they were in possession since the year 1969 and that they would suffer irreparable loss, if temporary injunction is not granted.

5. The said application was opposed by the respondents.

6. The Court of Civil Judge Senior Division, Gondia found that the petitioners could not produce any material to support their contentions except stating that they were in possession of the suit property since the year 1969. It was found that no *prima facie* case was made out by the petitioners and that the respondents intended to construct police chowki on the suit property, which is admittedly land belonging to the State. The appellate Court agreed with the findings of the Court below and dismissed the appeal.

7. The learned counsel appearing for the petitioners submitted that if temporary injunction is not granted, the suit itself would be rendered meaningless and that continuous possession since 1969 in the suit property, at least qualified the petitioners for being evicted as per law and not otherwise.

8. It was further submitted that the respondent No.2 had issued notice on 26/07/2021, giving time of seven days to vacate the suit property, but in July, 2021 itself, the petitioner had applied for grant of lease and that such an application is still pending before the concerned authority. On this basis, it was submitted that the impugned order deserved to be interfered with.

9. Mr.K.L.Dharmadhikari, learned AGP has appeared on behalf of the respondents and has opposed the contentions raised on behalf of the petitioners.

10. Heard learned counsel for the rival parties. The question of irreparable loss that the petitioners may suffer in the absence of an order of temporary injunction would arise only if they are able to make out a strong *prima facie* case in their favour. In the absence of *prima facie* case, the aspect of balance of convenience and irreparable loss pales into insignificance. Therefore, it needs to be first examined as to whether the petitioners have made out *prima facie* case in their favour. A perusal of the material on record shows that other than claiming that the petitioners have been in possession of the suit property since 1969, there is nothing produced

by the petitioners before the Courts below or this Court to show even a semblance of right that they may have in the suit property. It is settled law that merely because a person has been in long standing possession, although blatantly illegal, would not result in accrual of any right in the suit property. The suit property belongs to the State and the State authorities intend to undertake construction of police chowki thereon.

11. The contentions raised on behalf of the petitioner that in July, 2021, they applied for grant of lease and that such an application is pending before the concerned authority can be of no consequence for demonstrating even a semblance of right in the suit property.

12. The two Courts below have concurrently considered the entire material on record in the correct perspective to reach findings against the petitioners, which do not deserve interference in writ jurisdiction.

13. Hence, the writ petition is dismissed.

JUDGE

*Digitally signed by*RAVIKANT
CHANDRAKANT KOLHE
*Signing Date:*19.07.2022
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