

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

Writ Petition No.3538 of 2020

Sh. Chetan S/o Bhimraj Pendam

... Petitioner

Versus

The State of Maharashtra and others

... Respondents

Shri Anil S. Mardikar, Senior Advocate, assisted by
Shri Digvijay Singh, Advocate for Petitioner.

Shri S.S. Doifode, Assistant Government Pleader for Respondent
No.1.

Shri D.C. Daga, Advocate for Respondent No.2.

Shri M.V. Samarth, Senior Advocate, assisted by Shri Vipul Ingle,
Advocate for Respondent No.3.

**CORAM : NITIN JAMDAR AND
ANIL L. PANSARE, JJ.**

DATE : 22 FEBRUARY 2022

P.C.:

Though the learned Counsel for the parties have argued the matter at some length, ultimately what transpires is that the Petition is premature.

2. The Petitioner is aggrieved by the communication dated 29 October 2020 issued by the Respondent No.1-

Sub-Divisional Officer. The Petitioner has treated this communication dated 29 October 2020 as a direction issued by the Respondent No.1- Sub-Divisional Officer to the Respondent No.2- Maharashtra Industrial Development Corporation ('MIDC') to evict the Petitioner from the premises, i.e. Plot No.P-4, MIDC, Wardha. The Petitioner's case is that the apprehension that the communication dated 29 October 2020 will result in the eviction from the premises was further substantiated by the action taken by the Respondents towards dispossession. Therefore, the Petitioner has filed this Petition.

3. We have perused the communication dated 29 October 2020 issued by the Sub-Divisional Officer-Respondent No.1 to the Respondent No.2- MIDC. It refers to an enquiry and calls upon the Respondent No.2- MIDC to take action in respect of Plot No.P-4 in possession of the Petitioner and hand over the same to the Respondent No.3, refers to as the Lessee. The learned Counsel for the Respondents submit that this communication is issued under Section 53 of the Maharashtra Land Revenue Code, 1966 ("the Code of 1966"). To a query to the learned Assistant Government Pleader as to whether the Respondent No.1- Sub-Divisional Officer could summarily evict a person under the Code of 1966 from a plot of land leased by the Respondent No.2- MIDC, since there is a specific provision of Section 29 of the Maharashtra Industrial Development Act, 1961 ("the Act of 1961") for that purpose, the learned Assistant Government Pleader has

submitted that the communication dated 29 October, 2020 is not an order directing eviction but it is only a communication calling upon the Respondent No.2- MIDC to take action as per law.

4. Section 29 of the Act of 1961 makes the Bombay Government Premises (Eviction) Act, 1955 (“the Act of 1955”) applicable to the lands belonging to or vesting in or leased by the Corporation. Under the provisions of the Act of 1955, a procedure is provided for evicting the persons who are occupying these lands without any right.

5. Therefore, the Respondent No.2- MIDC will have to follow the provisions of Section 29 of the Act of 1961, if the Respondent No.2- MIDC intends to dispossess the Petitioner, who is in possession since 2002 as contended. As clarified above, the impugned communication does not directly evict and dispossess the Petitioner. Therefore, the Petition being premature, it is not necessary to entertain the Petition any further.

6. The learned Senior Advocate for the Respondent No.3 contends that the Petitioner is not entitled to any relief, since the Petitioner has made incorrect and false averments in the Petition as regards his entitlement. Reliance is placed on the decision of the Apex Court in *Kishore Samrite Vs. State of Uttar Pradesh and others*¹. It is further contended, relying on the decision of the Apex Court in *New Era Fabrics Limited Vs. Bhanumati Keshrichand*

1 (2013) 2 SCC 398

*Jhaveri and others*² that the Petitioner is also guilty of perjury and therefore, no relief should be granted to the Petitioner. It is also contended that the Petitioner has also obtained an interim order by misleading the Court.

7. Since we are not entertaining the Petition on the ground that it is premature, it is not necessary to consider and apply the principles relied upon by the Respondent No.3. Secondly, when the interim order was passed, the Petitioner was in possession and was sought to be dispossessed under the impugned order passed by the Respondent No.1- Sub-Divisional Officer, which is now clarified as only a recommendation. Considering these facts, the Court while issuing notice had protected the possession of the Petitioner.

8. In light of the above position that the impugned communication is not an order of eviction and the action under Section 29 of the Act of 1961 is yet to be taken, the Petition is premature and is disposed of as such. The interim order stands vacated.

9. The contentions of the parties on facts are kept open.

(ANIL L. PANSARE, J.)

(NITIN JAMDAR, J.)