

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

WRIT PETITION NO. 262 OF 2021

1. Smt. Laxmibai @ Lahanabai
Baliram Nanhe, aged about 68 years,
Occ.: Labour

2. Deepak s/o Baliram Nanhe
aged 45 years, Occupation Labour,
Both resident of Nehru Ward, Ruyal,
Tahsil Pauni, District Bhandara.

.. Petitioners

Versus

1. Lilasar s/o Harichandra Pachare
aged about 40 years,
Occupation Cultivation,
resident of Ruyal, Tahsil Pauni,
District Bhandara.

2. Village Panchayat, Ruyal,
through its Secretary, Tahsil Pauni,
Dist. Bhandara.

3. Sarpanch, Village Panchayat, Ruyal,
Both resident of Ruyal, Tahsil Pauni,
District Bhandara.

.. Respondents

Mr. Vasant D. Muley, Advocate for petitioners.

Mr. H.A. Khedikar, Advocate for respondent Nos.1 to 3.

CORAM : MANISH PITALE, J.

DATED : 27.04.2022.

ORAL JUDGMENT

Rule. Rule made returnable forthwith. Heard finally
with the consent of the learned counsel appearing for the rival parties.

(2) By this writ petition, the petitioners (i.e. original plaintiffs) have challenged concurrent orders passed by the two Courts below whereby an application for grant of temporary injunction filed by the petitioners was dismissed.

(3) The petitioners filed suit for declaration and permanent injunction against the respondents, wherein it was alleged that the respondent No.1 had illegally started construction on a piece of land, which was regularized in favour of the petitioners by a specific order of the competent authority. It was claimed that the respondent No.1 undertook construction illegally and upon noticing the same the petitioners filed the aforesaid suit. In the said suit, an application for temporary injunction was filed, seeking direction to restrain the respondent No.1 from continuing with the construction during pendency of the suit.

(4) The petitioners placed on record documents before the trial Court to show that the suit property was Government land on which the competent Authority had passed an order of regularization in favour of the petitioners. A certificate issued by the Talathi stating that such piece of land stood regularized in favour of the petitioners, in

terms of the order passed by the competent Authority, was also placed on record before the Courts below. The petitioners claimed that the said land admeasured 2178 sq. ft.

(5) The respondent No.1 filed his written statement before the trial Court and came up with a positive case that insofar as the suit property was concerned, a Sale-Deed dated 12.12.1958 had been executed in favour of his predecessor and that is how, he was entitled to the said piece of land.

(6) By order dated 28.08.2020, the trial Court rejected the application for temporary injunction at Exhibit 5. It was observed that prima facie the possession and not ownership of the petitioners was shown in the suit property. The trial Court referred to the Government Scheme and held that since appropriate order sanctioning relief in favour of the petitioner was not issued under the said Scheme, no case for grant of temporary injunction was made out.

(7) Aggrieved by the same, the petitioners filed appeal before the District Court but, the appeal was dismissed and observations were made against the petitioners as regards *prima facie* case.

(8) Mr. Muley, learned counsel appearing for the petitioners, invited attention of this Court to the contents of the plaint, the written statement and the documents issued by the competent Authority as well as the Talathi. It was submitted that the said documents made out a strong *prima facie* case in favour of the petitioners, which the Courts below failed to appreciate. It was submitted that there was not even an iota of material produced on record by the respondent No.1 to support the positive statement made in the written statement regarding right in the suit property on the basis of the Sale-Deed allegedly executed in favour of the predecessor of respondent No.1. On this basis, it was submitted that the impugned orders deserved to be set aside.

(9) Mr. Khedikar, learned counsel appearing for respondent No.1 submitted that the trial Court, as well as the appellate Court considered the case of the petitioners on the well known parameters for grant of temporary injunction and it was found that the material on record did not support the case of the petitioners for grant of temporary injunction. It was submitted that when the petitioners had raised grievance regarding the alleged illegal construction being

undertaken by respondent No.1 in the first instance before the police, no such claims were made and no document was produced, upon which the petitioners later placed reliance in the suit filed before the trial Court. It was submitted that therefore, no interference was warranted.

(10) This Court has perused the material on record in the backdrop of the submissions made on behalf of the rival parties. In order to be examined whether the petitioners deserve an order of temporary injunction in their favour, the Courts below were expected to analyze the material on record to reach *prima facie* findings on the well known parameters for grant of temporary injunction. A perusal of the concurrent orders passed by the two Courts below show that the material relied upon by the rival parties while making competent claims, was not appreciated in the correct perspective. While the petitioners placed on record documents issued by the competent Authority, as also the Talathi, demonstrating the right of the petitioners in the suit land, the positive case stated by the respondent No.1 in the written statement was not supported by any document on record. In the light of the fact that the respondent No.1 specifically pleaded that

there was indeed a Sale-Deed in favour of his predecessor as regards the very suit property, it was incumbent upon the respondent No.1 to produce some material to support such a positive stand taken in the written statement.

(11) But, no such material was placed on record on behalf of respondent No.1. In this backdrop, it was expected that the Courts below would consider the documents placed on record by the petitioners to examine as whether a *prima facie* case was made out. The trial Court erred in observing that *prima facie* possession and not ownership of the petitioners was shown in the suit property. There was no reason for the trial Court to reach the said finding in the face of the material placed on record by the petitioners. The appellate Court also erred in holding against the petitioners. On all the three parameters for grant of temporary injunction i.e. strong *prima facie* case, grave and irreparable loss that petitioners may suffer in the absence of an order of temporary injunction and balance of convenience, were all demonstrated in their favour by the petitioners, which the Courts below failed to appreciate in the correct perspective. Therefore, it is found that the impugned orders are unsustainable and

that the application for temporary injunction at Exhibit-5 ought to have been allowed.

(12) Accordingly, the writ petition is allowed.

(13) The impugned orders are quashed and set aside. But, it appears that during the pendency of the proceedings before the two Courts below, the respondent No.1 proceeded with the construction and it reached a particular level till on 19.01.2021, this Court directed the parties to maintain status quo. Therefore, it would be appropriate that while allowing this writ petition, suitable directions are given to the trial Court to dispose of the suit expeditiously.

(14) In the view of the above, the writ petition is allowed in above terms. The trial Court is directed to dispose of the suit filed by the petitioners at the earliest. During pendency of the suit, the parties shall continue to maintain status quo as on 19.01.2021.

(15) Needless to say, the trial Court shall proceed on merits of the matter without being influenced by the observations

made in this order.

(16) Rule is made absolute in above terms. No costs.

[MANISH PITALE J.]

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