

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

WRIT PETITION NO. 2946 OF 2017

Ramprasad Subhash Masade

-- Petitioner

Vs.

The State of Maharashtra and others

-- Respondents

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. C.B. Dharmadhikari, Advocate for Petitioner

Mr. D.P. Thakare, Addl.G.P. for Respondent Nos. 1 & 2

Mr. A.R. Patil, Advocate for intervenors

CORAM : MANISH PITALE, J.

DATE : 14 MARCH 2022

By this Writ Petition, the petitioner has challenged concurrent orders passed by the two Courts below rejecting the prayer for temporary injunction made on behalf of the petitioner (original plaintiff No. 2).

2. The petitioner and proforma respondent No.3 (original plaintiff No.1) had filed a suit for declaration, perpetual and mandatory injunction before the Court of Civil Judge, Senior Division, Chandrapur (hereinafter referred to as "Trial Court"). The said plaintiffs have sought declaration that the proposed action of respondent No.2 i.e. Tahsildar for removal of structure

put up by the original plaintiffs as illegal and void. There is also declaration sought in respect of an order passed by the Naib-Tahsildar, whereby the said construction is held to be illegal. By the application for temporary injunction, the original plaintiffs sought an order restraining the defendants i.e. the State authorities from removing the structure in question.

3. Both the Courts below concurrently found that the plaintiffs failed to make out a case in their favour on the well-known parameters for grant of temporary injunction i.e. strong prima facie case, grave and irreparable loss that may be caused if injunction is not granted and the balance of convenience being in favour of the plaintiffs.

4. As far as back as on 19/05/2017, this Court granted an order of status quo in favour of the petitioner on a statement that no construction shall be carried out on the land in question and that a motor garage was being run from the structure already constructed on the land. The petitioners have enjoyed said order of status quo for almost five years.

5. The learned counsel for the petitioner submitted that an application seeking regularization of the aforesaid encroachment is pending before the respondent No. 1 i.e. the Collector and that there are certain reports submitted in favour of

the petitioners for grant of such regularization. It is submitted that so long as the pending application is not decided either way, it would not be appropriate for the status quo order operating in favour of the petitioner being vacated or the petition being disposed of.

6. Mr. D.P. Thakre, learned Assistant Government Pleader appearing for the respondent Nos.1 and 2 submitted that the pending application of the petitioner shall be decided within two weeks from today.

7. In view of the above, list this petition for further consideration on **31/03/2022**. In the meanwhile, the respondent No. 1 shall decide the application of the petitioner filed under Section 51 of the Maharashtra Land Revenue Code.

8. It is made clear that the said application shall be decided positively before expiry of the period of two weeks and that no further extension of time will be granted.

9. List the petition on **31/03/2022**.

CIVIL APPLICATION (CAW) NO. 1577 OF 2018

This is an application filed by the two persons seeking intervention in the present Writ Petition. It is stated that the applicants are residents of a colony adjacent to the land on which

the petitioner has encroached and that they are interested in the issues that are being considered by this Court in the present petition.

2. The application is opposed on behalf of the petitioner, pointing out that an application filed under Order 1 Rule 10 of the Code of Civil Procedure before the Trial Court by the applicants herein, stood rejected and that the companion Writ Petition No. 6822/2019 on the said issue, is pending before this Court.

3. From the contents of the application and the documents filed therewith, this Court finds that in writ jurisdiction the applicants can be permitted to address this Court as interveners and that this application deserves to be allowed. This is without prejudice to the contentions of the parties in Writ Petition No. 6822/2019.

4. In view of above, the application is allowed and the applicants are permitted to intervene in the matter.

5. Application stands disposed of.

JUDGE