



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 12846 OF 2023

**GRAMPANCHAYAT GONDEGAON
THROUGH ITS SARPANCH SAGAR ANNASAHEB BADE
VERSUS
RAMESH DAULAT PHOPASE AND OTHERS**

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Advocate for Petitioner : Mr. D.A Bide and Mr.Pradeep Gurunath Tambade
Advocate for Respondents : Adv. Joyebi Shaikh

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**CORAM : SHAILESH P. BRAHME, J.
DATE : 18th DECEMBER 2023.**

Per Court :

. Heard the learned Counsel for litigating sides. Heard finally at the admission stage.

2. The petitioner is a village panchayat, who is questioning judgment and order dated 09.05.2023 passed by the District Judge-2, Shrirampur, District Ahmednagar in MCA No.6/2023, reversing the order passed below Exhibit-5 in RCS No.50/2023.

3. The respondents are original plaintiffs who have filed RCS No.50/2023 for declaration, challenging the notices issued by the petitioner, village panchayat for removal of encroachment. Alongwith plaint application (Exhibit-5) is filed for temporary injunction. The petitioner contested suit as well as application Exhibit-5. The trial Court by order 10.04.2023 rejected application (Exhibit-5). Being aggrieved,

MCA No.6/2023 was filed by the respondents, which was allowed by the impugned judgment and order, restraining the petitioner from interfering with possession of the respondents over the suit shop.

4. The learned Counsel for the petitioner submits that the impugned judgment and order is against the principles laid down in the matter of Jagpal Singh and Others Vs. State of Punjab and Others, reported (2011) 11 SCC 396. The respondents are the encroachers and do not have any documents to show their title over the land occupied by them. Prima facie, there is no case in their favour despite that the Lower Appellate Court granted injunction. Learned Counsel submits that there is an apparent error in exercise of the jurisdiction by the Lower Appellate Court because the evidence is appreciated in an appeal under Order 43 and almost mini trial is held by the Lower Appellate Court.

5. The learned Counsel for the petitioner submits that though Public Interest Litigation is pending, but there is nothing on record to show that any protection is granted to the respondents/plaintiffs. He has placed on record the orders passed on 11.09.2022 and 03.05.2023 to demonstrate that there is no protection. The land gut no.16 upon which the respondents are conducting the business illegally though considered to be the land of the government, there is apparent encroachment.

6. Per-contra, learned Counsel for the respondents supports impugned judgment and order. According to him, by order passed on 06.10.2022 in PIL No.2/2022, there is adequate protection and no

coercive action is contemplated by the petitioner authorities. He would submit that the respondents are in possession since last more than 10 years and paying the taxes. Their occupation and the possession is deemed to have been regularized. In PIL, a statement is made by the learned AGP to not to take adverse action against the encroachers. Hence the impugned action is against the spirit of the orders. Lastly he would submit that no coercive action can be taken when the substantive suit is pending. Otherwise suit would become infructuous.

7. I have considered rival submissions of the parties. The respondents are occupant of land gut no.16. They have filed suit for declaration, challenging various notices issued by the petitioner for removal of encroachment and for injunction. I have considered various orders passed in suo moto PIL No.2/2022 by the Principal Seat. Order dated 06.10.2022 shows that there shall not be further regularization of any encroachment by any authority or officer of the Government, until the further orders of this Court except in the manner directed by the Supreme Court in the matter of Jagpal Singh (supra). This Court does not find that any protection is given to the encroachers. Further order dated 15.09.2022 and dated 03.05.2023 do not show any such a protection.

8. The learned Counsel for the respondents during the course of hearing, has tendered orders dated 20.01.2023 and 17.02.2023 to show that there is a protection. Order dated 20.01.2023 shows that the statement of learned AGP made in context of removal of encroachment

of Palghar. Both these orders do not show that the learned Government Pleader made any statement for not taking any action for removal of encroachment from the Government land. Therefore, I am of the considered view that there is no protection to the encroachers. On the contrary, the tenore of the orders placed on record show that there would be read map for authorities to remove the encroachment.

9. The law laid down by Supreme Court in the matter of Jagpal Singh (supra) is very clear which is still operating the field. The same has been consistently followed. The protection granted by the Lower Appellate Court is against paragraph no. 22 which is as follows :

"22. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal / unauthorized occupants of Gram Sabha / Gram Panchayat / Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land."

10. The scope of the jurisdiction is laid down by the Supreme Court in the matter of Wander Ltd. Vs. Antox India P. Ltd. Paragraph No.14 of the said judgment as follows :

"14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in [Printers \(Mysore\) Private Ltd. v. Pothan Joseph](#) :

These principles are well established, but as has been observed by Viscount Simon in Charles Oseption & Co. v. Johnston the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case.

The appellate judgment does not seem to defer to this principle."

11. When the impugned order is tested to the touchstone of the law laid down by the Supreme Court stated above, the Lower Appellate

Court indulged into appreciation of evidence. The Lower Appellate Court arrived at another view possible after considering the entire evidence. This is not a scope of jurisdiction of the Lower Appellate Court while dealing with the matter under Order 43 of CPC.

12. The findings recorded by the Lower Appellate Court in paragraph no.19 and 20 are unsustainable because those conclusions cannot be arrived at the interlocutory stage. A full-fledged trial is required to be undertaken for the appreciation of the evidence.

13. Prima facie I do not find any documentary evidence in favour of the respondents to protect their possession. The trial Court has rightly rejected their application (exhibit-5). There is no perversity, patent illegality or any error of jurisdiction committed by the trial Court. Therefore, interference by the Lower Appellate Court by impugned order is unwarranted.

14. The submissions of learned Counsel for the respondents that they have possession over 10 years and their possession has been regularized by the Competent Authority have not been substantiated. Accepting the taxes cannot be said to be regularization. Under these facts and circumstances, impugned judgment and order is found to be unsustainable and perverse. I therefore, pass following order :

ORDER

(i) The impugned judgment and order dated 09.05.2023 passed by the District Judge-2, Shrirampur, District Ahmednagar in MCA

No.6/2023, is quashed and set aside.

- (ii) The order passed by the trial Court below exhibit-5 is restored.
- (iii) The writ petition is allowed in above terms.

[SHAILESH P. BRAHME, J.]

Najeeb.