

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9519 OF 2022

Bajirao Anant Chavan & Ors. ... Petitioners
V/s.
Govt. of Maharashtra Through Collector
& Ors. ... Respondents

Mr. Sandeep Koregave for the petitioners.

Mr. Vaibhav R. Gaikwad with Mr. R. B. Atharva for
respondent Nos.2 and 3.

Mr. P. P. Pujari, AGP for the State.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 25, 2023

P.C.:

1. By this writ petition under Article 227 of the Constitution of India, the petitioners/original plaintiffs are challenging orders passed by the Courts below rejecting the application for temporary injunction restraining the acquiring body and Gram Panchayat from disturbing plaintiffs' possession over the suit property without following due process of law.

2. The petitioners filed Regular Civil Suit No.631 of 2021 seeking a declaration that the plaintiffs have become owners of the suit property by adverse possession, and an injunction is sought against the respondents not to disturb the petitioners' possession

over the suit property without following due process of law. In the said suit, the petitioners filed an application for a temporary injunction seeking relief of temporary injunction not to disturb the petitioners' possession without following due process of law. The plaint proceeds on the basis that land admeasuring 28R was acquired by respondent No.1 in 1984. The suit property is part of the acquired portion. The petitioners also accept the fact that they received compensation for the acquired property. However, according to them, they continued in possession for a period of more than 36 years. According to the petitioners, their possession of the suit property is continuously open and peaceful. According to the petitioners, the defendant was under the obligation to regular encroachment under section 43 of the Maharashtra Land Revenue Code, 1966, and therefore, possession of the property should not be disturbed by the defendant without following due process of law. An alternative plea of ownership by adverse possession is raised in paragraph No.19 of the plaint. According to the petitioners, 30 years of adverse possession was completed in June 2018.

3. The Trial Court, by order dated 13th August 2021, rejected a temporary injunction application. The Appellate Court, by order dated 9th March 2022, dismissed the appeal against the said judgment.

4. It is well settled that a person seeking relief from a temporary injunction needs to satisfy the Court on the following three aspects: (i) Prima facie case, (ii) balance of convenience, and (iii) irreparable loss.

5. While considering the prima facie case, the maintainability of the suit and the possibility of plaintiffs getting relief prayed are the factors which the courts are required to consider. In the facts of the present case, it is not in dispute that the suit property is a part of the property which the State had acquired. The Courts below have recorded a finding that the documents on record do not support the case of settled possession or adverse possession of the plaintiffs. The Courts below have also adverted to section 53 of the Maharashtra Gram Panchayat Act, 1958, which empowers Gram Panchayat to remove obstruction encroachment upon public streets and upon sites which are not private properties but vested with Gram Panchayat.

6. Learned advocate for the petitioners submitted that the material on record indicates settled possession of the petitioners over the suit property. He submitted that a person in settled possession of immovable property is entitled to even against the true owner restraining him from dispossessing such person without following due process of law. According to him, the petitioners have perfected their title by adverse possession. In support of his submissions, he relied on the following judgments:

- a) **Tukaram s/o Lingappa Nagthane vs. Grampanchayat Karyalaya, Sawargaon** reported in 1989 Mh.L.J. 535.
- b) **Ravinder Kaur Grewal And Others vs. Manjit Kaur & Others** reported in (2019) 8 SCC 729.
- c) **State of Rajasthan vs. Harphool Singh (Dead) Through His Lrs.** Reported in (2000) 5 SCC 652.

- d) **Rame Gowda (Dead) By Lrs. vs. M. Varadappa Naidu (Dead) By Lrs. And Another** reported in (2004) 1 SCC 769.
- e) **R. Hanumaiah And Another vs. Secretary To Government of Karnataka, Revenue Department And Others** reported in (2010) 5 SCC 203.
- f) **Balkrishan vs. Satyaprakash And Others** reported in (2001) 2 SCC 498.
- g) **Kshitish Chandra Bose vs. Commissioner of Ranchi** reported in (1981) 2 SCC 103.

7. Per contra, learned advocate for the respondents submitted that the government has acquired undisputedly suit property. The averments in the suit are not sufficient to raise the issue of adverse possession as the pleadings do not constitute essentials of adverse possession. The petitioners are not entitled to claim adverse possession against the government. In any case, the suit in its present form is not maintainable.

8. At this stage, it is necessary to consider the maintainability of a plea of ownership by the plaintiff. The plaintiffs must plead the date of possession becoming hostile to claim ownership by adverse possession. The plaintiffs must allege acceptance of ownership of the true owner. The pleading of *animus possidendi* is also necessary. In the absence of said pleadings, no amount of evidence can substitute such pleadings.

9. On perusal of the averments in the plaint, it appears that the plaintiff is seeking an injunction based on the factum of settled

possession. The plaintiff has sought a declaration of ownership by adverse possession as an alternative plea. It is not pleaded that the plaintiffs accept ownership of either defendant No.1 or defendant Nos.2 and 3. The date of possession becoming hostile is not specifically pleaded. The three ingredients, namely (i) Possession in adequate continuity, (ii) adequate in public, and (iii) adverse to competitor, needs to be pleaded. It is well settled that mere assertion of title of adverse possession is not sufficient unless plaintiffs prove *animus possidendi*. Therefore, in my opinion, in the absence of necessary pleadings, prima facie, the petitioners are not entitled to claim title by adverse possession.

10. Moreover, in the case of **the State of Haryana vs. Mukesh Kumar & Ors.** reported in 2011 10 SCC 404, the Apex Court has held that a person is not entitled to claim adverse possession against the government. Therefore, at this stage, the petitioners cannot claim an injunction based on their plea of adverse possession.

11. The next plank of submission is based on settled possession of the plaintiffs over the suit property. In **Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira**, (2012) 5 SCC 370 at page 396, it is held as under

“97. Principles of law which emerge in this case are crystallised as under:

(1) No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades, such a person would not acquire any right or interest in the said property.

(2) Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.

(3) The courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.

(4) The protection of the court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or licence agreement in his favour.

(5) The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property, irrespective of his long stay or possession.”

12. The Apex Court has considered an aspect as to whether a person who is inducted in possession by the owner and, thereafter, his possession becomes illegal and the person who had been inducted in possession of a property without authority of law. The Apex Court held that the persons in possession as an agent or caretaker are not entitled to an injunction as their possession cannot be termed as possession, which requires protection. In the facts of the present case, once the property is acquired by defendant No.1, the petitioner is not entitled to seek an injunction against the acquiring body.

13. In the facts of **The Commissioner, Bangalore Development & Anr. vs. Brijesh Reddy & Anr.** reported in (2013) 3 SCC 66, the Apex Court was considering the maintainability of a civil suit when the suit property was acquired under land acquisition proceedings. The Apex Court held that the Land Acquisition Act is a complete

code in itself and is meant to serve a public purpose. Therefore, by necessary implication, the power of the Civil Court to take cognizance under section 9 of the Civil Procedure Code, 1908, is excluded, and the Civil Court is devoid of jurisdiction even to issue a bare injunction restraining authorities on the allegations of failure to follow procedure under the act. In the facts of the case, the plaintiffs have not raised an issue raising either procedural or any other illegality committed by the acquiring body. The only plea raised by the plaintiffs seeking an injunction is based on alleged settled possession. According to the petitioners, they have a house on the said property and are doing agricultural activities over the suit property. Therefore, because the plaintiffs have accepted compensation, they are not entitled to continue with possession of the suit property.

14. Reliance placed on the judgment in the case of **Rame Gowda** (supra) is misplaced as, in the facts of the said case, the person in said possession was held to be entitled to an injunction. However, the Court was not considered a case of a person whose land was acquired under the provisions of the Land Acquisition Act and had accepted compensation.

15. Therefore, in my opinion, the concurrent orders of the Courts below do not require interference at the hands of this Court, particularly when the suit property has been acquired and the plaintiffs have accepted the compensation.

16. The rest of the judgments relied upon by the petitioners are on the point of relief based on a plea of adverse possession. There

cannot be a dispute about the proposition of law laid down by the Apex Court in the judgment. However, in the absence of necessary pleading to raise the issue of adverse possession, the plaintiffs/petitioners are not entitled to any relief based on a plea of adverse possession. The plaintiffs are also not entitled to relief based on this alleged settled possession as the property has been acquired, and the petitioners have accepted compensation. Hence, there is no merit in the above petition.

17. The writ petition is dismissed. No costs.

18. Since this Court had protected the petitioners for a period of two years, the same is continued for a period of two weeks from today.

(AMIT BORKAR, J.)