

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

Writ Petition (WP) No. 3228 of 2023

Siddharth Mitra Mandal through its Authorized Member Shri Dipak S/o
Motiramji Tantarapale

Versus

The State of Maharashtra through the Collector, Amravati and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.N. Nandeshwar, Advocate for the petitioner.
Ms. M.A.Barabde, AGP for the respondent nos. 1 and 2.

**CORAM : ANIL S. KILOR, J.
DATED : 9th AUGUST, 2023.**

In the present matter both the Courts below have denied grant of temporary injunction in favour of the petitioner/plaintiff and while denying so it has observed that the petitioner has no *prima facie* case for preserving the suit property till the conclusion of the trial.

2. It is the case of the petitioner/plaintiff that a suit for perpetual and mandatory injunction was filed in the capacity as an owner of property by way of adverse possession for more than 30 years. It is submitted that, the plaintiff has erected the Buddha Vihar with statue of

Dr. Babasaheb Ambedkar on 13th November, 1976. It is stated that on 13th November, 1976, the defendant no.3 Gram Panchayat resolved to allot the land to the plaintiff for erection of the Buddha Vihar with statue of Dr. Babasaheb Ambedkar and accordingly temporary structure was erected.

3. Whereas, it is the case of respondent no.3 Gram Panchayat that the construction is illegal and it can be removed without notice. For this purpose, the Gram Panchayat has relied upon the case of the Hon'ble Supreme Court in the case of *Jagpal Singh Vs. State of Punjab*¹, whereby the Hon'ble Apex Court has strictly prohibited the allotment of public land to any person. It is submitted that the action of removal was initiated as per the directions of the Divisional Commissioner.

4. On a query put to the petitioner about a permission if any sought by the petitioner in respect of erection of structure and installation of statue, he has pointed out the resolution of the Gram Panchayat dated 13th November, 1976.

5. After going through the said resolution, it is evident that in the said resolution except the allotment of land, there is no permission of erection of structure and installation of any statue. Nothing has been

1 (2011) 11 SCC 396

brought on record to show any such permission was granted to the petitioner.

6. Moreover, both the Courts have concurrently held that there is no *prima facie* case made out by the plaintiff. Further both the Courts have considered the structure as encroachment causing hindrance in public utility and functioning of weekly bazar.

7. In the circumstances, as there is no perversity committed by both the Courts below in denying the temporary structure of the petitioner. Accordingly, the writ petition is dismissed.

[ANIL S. KILOR, J.]

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by
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