



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

WRIT PETITION NO.5932 OF 2022

[Abhimanyu Girdharilal Bankuwale and others .vs. The State of Maharashtra and others]

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

Court's or Judge's orders

Dr. Mrs. R.S. Sirpurkar, Advocate for the petitioners,
Shri N.R. Patil, A.G.P. for respondent nos.1 to 3,
Shri A.J. Thakkar, Advocate for respondent no.4,
Shri J.J. Chandurkar, Advocate for respondent no.5.
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CORAM : ANIL S. KILOR, J.
DATE : 12.09.2023.

1. The petitioners are the plaintiffs in a suit for declaration and permanent injunction. The application Exh.5 filed by the petitioners came to be allowed, vide order dated 03.05.2021, which was the subject matter of challenge in Misc. Civil Appeal filed by the respondent no.5. The said appeal came to be allowed, vide impugned judgment and order dated 16.08.2022 and thereby the temporary injunction granted in favour of the petitioners was set aside. The same is under challenge in this writ petition.

2. The suit plot number is 135. The petitioners applied under the Maharashtra Land Revenue Code, 1966 to the revenue authorities for regularization of their encroachment over the suit property. Pending the said applications, the respondent no.5 approached to the Lokayukta for eviction of the petitioners from the suit land.

3. Thereupon, the revenue authorities got activated and they initiated the proceedings for eviction of the petitioners. The petitioners on findings that, because the respondent no.5 has approached the Hon'ble Lokayukta, there is a less chance that the revenue authorities would consider the case of the petitioners, the suit they filed for declaration and permanent injunction. In the suit, the following were the prayer clauses :

- (i) to decree the suit by passing declaration that the interim order dated 13/1/2021 passed by defendant no.2 is violative of the statutory right conferred by the provisions of section 51 of MLR Code 1966 read with rule 43 of Disposal of Government Lands Rule 1971.
- (ii) To decree the suit for permanent injunction restraining defendant nos.2 to 4 from taking any steps to demolish the suit house till the application filed by the plaintiffs for regularization of the construction of suit house is decided by the committee comprising defendant nos.2 to 4.
- (iii) To saddle cost of the proceedings on the defendants.
- (iv) To grant any other relief which this Hon'ble court deems fit in the facts and circumstances of the case.

4. From the above referred prayer clauses, it is apparent that the main prayer of the petitioners was relating to declaration that the interim order dated 13.01.2021 passed by the Sub-Divisional Officer is violative of the statutory right conferred by the provisions of Section 51 of MLR Code, 1966 read with Rule 43 of Disposal of Government Lands Rule, 1971.

5. The order dated 13.01.2021 relates to rejection of prayer of the petitioners for grant of stay to the order of the Tahsildar.

6. It is pertinent to note that the said revenue proceeding filed by the petitioners was disposed of by the Sub-Divisional Officer on 21.12.2021 for the reason that the petitioners have filed the civil suit.

7. Thus, admittedly the interim order dated 13.01.2021 refusing to grant stay to the petitioners in the above referred proceeding before the Sub-Divisional Officer merged with the final order disposing of the said revenue proceeding. As such the prayer clause No. (i) in the suit does not survive.

8. As far as second prayer clause is concerned, that is in respect of permanent injunction. The learned lower appellate court, while reversing the order of temporary injunction of the trial court, has observed that there is no *prima facie* case made out by the petitioners for grant of temporary injunction. Moreover, there is no balance of convenience in favour of the petitioners and also that no irreparable loss will be caused to the petitioners.

9. The fact that the petitioners have themselves applied for regularization of their encroachment, shows that the petitioners have no right to claim to be in possession. Therefore, in absence of any right in favour of the petitioners to remain to be in possession on the ground that their application for regularization of encroachment is pending, I do not find any error committed by the learned lower appellate court.

10. Moreover, the learned Assistant Government Pleader for the State, has raised an objection to the tenability of this suit itself by pointing out Section 4 (fc) of the Maharashtra Revenue Jurisdiction Act, 1876. However, at this stage, I am not going into the said issue and it is kept open to be decided by the trial Court, if raised by the State.

11. In the circumstances, as no error has been committed by the learned lower appellate court, the writ petition is dismissed.

(ANIL S. KILOR, J.)