



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

Writ Petition No.811 of 2024

**SMT. DALERBAI MANCHARSHAH AWARI HIGH SCHOOL THROUGH ITS
HEAD MISTRESS, DIPALI DINESH BHANDE
VS
JAYSHRI RAMESHCHANDRA BHORE 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 R.S. Thengne, Advocate for the Petitioner/s
Shri Akhtar Ansari, Adv. h/f Shri Harish Dangre, Advocate for the
respondent No.1

**CORAM : ANIL S. KILOR, J.
DATED : 23.02.2024**

1. Heard.
2. The petitioner school run by the Mahatma Bahuuddeshiya Shikshan Sanstha. The petitioner school alone i.e. without the management, approached to the Executing Court and raised an objection to the execution of decree dated 17.10.2000, directing the defendants to deliver vacant possession of the suit plot to the plaintiff by removing the structure thereon.
3. It is pertinent to note that the said judgment and decree was modified in the First Appellate Court but this Court in Second Appeal by setting aside the judgment of the First Appellate Court, confirmed the judgment of the trial Court.
4. It is the case of the petitioner that, the school has perfected title over the land in dispute by adverse possession and further

claimed injunction against the decree holder, not to disturb the possession of the objector.

5. The Executing Court vide impugned order dated 13.12.2023, rejected the objection by making the following observations:

“10. So as per the judgment of Hon'ble High Court it was hold that the society is in possession of the school building and this society has not entered into an agreement with D.H. and J.D. No.1 allowed society to use construction on the suit property and this conduct of J.D. No.1 dis-entitled him from claiming equitable relief. The J.D. No.2 is also dis-entitled from claiming equitable relief. Thus, this is clear that the question was raised regarding the society, possession of the society and school and then also the possession was directed to be given to D.H. so it cannot be accepted that this society or this school is new to this proceeding. In fact, they knows very well about decree and under the new umbrella of principle J.D. No.1 and 2 are trying to make out different case. This is not the case that the adjudication of possession of school not made. But the adjudication of the school possession was already made. So the argument of obstructionist cannot be accepted. The judgments cited above by learned advocate of obstructionist are not helpful to the present application in hand due to the facts of the present application and facts in the judgments are different. In fact, the case of the J.D. Nos.1 and 2 as well as the case of the society and possession of the school were already adjudicated. The question of the slum is not important in this case because the property not taken by the authority in their custody for slum re-habitation. But, the possession claiming as per the decree by D.H. So I do not found anything just claimed by obstructionist to adjudicate the claim. Hence, the objection needs to be rejected. ...”

6. Admittedly, the petitioner is a school and it is run by the Mahatma Bahuuddeshiya Shikshan Sanstha. Thus, the school cannot be treated as an independent entity who is in possession of the structure in the suit plot.

7. The society has not raised any objection or claimed any title on the ground of adverse possession.
8. In absence of society as an objector and the school being not an independent entity and in absence of any evidence produced by the school on record, showing that the possession is not with the society but with the school or it was handed over by the respondent No.7 to the school not to the society, the objection was rightly rejected by the learned Executing Court.
9. In the circumstances, the writ petition is **dismissed**.
10. In view of the writ petition is dismissed, the application for amendment does not service. Accordingly, it is **disposed** of.

[ANIL S. KILOR, J.]