



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH: NAGPUR
WRIT PETITION NO.3259 OF 2024**

- | | |
|--|----------------|
| 1. Metro Motors, Amravati
2. Sanjay Ashok Kumar Chandwani
3. Mukesh Ashok Kumar Chandwani | ...Petitioners |
| Versus | |
| 1. Sub-Divisional Officer, Amravati
2. Department of Town Planning
Amravati
3. Tahsildar, Amravati
4. Talathi, Rewasa
5. Gram Panchayat Rewsa
6. Anil H. Jagmalani | ...Respondents |

WITH
CIVIL APPLICATION NO. 1488 OF 2024

Mr. Raheel Anwar J. Mirza for the Petitioner.
Ms Deepa I. Charlewar, AGP for the Respondent/ State.
Mr. Yash Venkataraman a/w. Adv. Gauri for Respondent No.6.

CORAM	:	N. R. BORKAR, J.
DATE	:	27 JUNE 2024.

PC:-

1. This petition takes exception to the order dated 11.3.2024 passed by Respondent No.3 - Tahsildar in Revenue Case No.MRC/81/Revs-255/609/2023-24.

2. The respondent No.6 herein had filed an application before the respondent No.3 that the construction carried out by the petitioners on the plot of land owned by him be removed.

3. By the order impugned, respondent No.3 has allowed the said application.

4. The petitioners being aggrieved by the order of the respondent No.3 on 22.3.2024 had filed appeal before respondent No.1 - Sub Divisional Officer (SDO). Alongwith the appeal, application for interim relief was filed. During pendency of the appeal, on 24.3.2024 the petitioners had filed writ petition before this Court being Writ Petition No. 2050 of 2024 alleging that the appellate authority is not hearing their application for interim relief. During pendency of the said petition and appeal before the appellate authority, on 26.3.2024 the petitioners had filed Special Civil Suit No.124 of 2024 challenging the order impugned.

5. After filing of the suit, the petitioners had filed Pursis in Writ Petition No. 2050 of 2024. For convenience, the contents of Pursis are reproduced herein below:

"PURSIS

1. The Petitioners humbly submit that Petitioners had filed the present petition challenging the inaction of Respondent No. 1-Sub-Divisional Officer, Amravati in not deciding the application for urgent hearing filed by the present Petitioner in Appeal No.M.R.C.-81 /Rewsa 2/2023-24,

challenging the Order dated 11/03/2024 passed by the Respondent No.3-Tahsildar, Amravati, by which the directions have been given to Petitioners for demolition of construction made on the land owned by the Petitioners before 27/03/2024.

2. The Petitioners sought for directions to the Respondent No.1-Sub - Divisional Officer, Amravati for deciding the appeal filed by the Petitioners, registered as Appeal No. M.R.C.-81/Rewsa 2/2023-24 immediately.

3. The Petitioners further sought for appropriate interim Order thereby staying the effect and implementation of Order dated 11/03/2024 (Annexure No.11), passed by Respondent no.3 - Tahsildar, Amravati in Revenue Case No. M.R.C-81/Rewsa/609/2023-24, and protection against the demolition Order passed by the Respondent No.3-Tahsildar, Amravati.

4. The Petitioners humbly submit that they also filed a suit for declaration and injunction before the Learned Civil Judge, Senior Division, Amravati, which came to be registered as Special Civil Suit No. 124/2024.

5. The Learned 6th Joint Civil Judge, Senior Division, Amravati was pleased to pass an Order dated 26/03/2024, a copy of which is filed herewith as Annexure P1. By which the Order of status quo is granted on the point of demolition.

6. Therefore, the Petitioners humbly seek liberty of this Hon'ble Court to withdraw the present petition in view of the Orders passed by the Learned 6th Joint Civil Judge, Senior Division, Amravati, in S.C.S. No. 124/2024."

6. This Court by order dated 27.3.2024 permitted the petitioners to withdraw the Writ Petition No.2050 of 2024.

7. By order dated 10.5.2024, the trial Court rejected the plaint. The trial Court has observed as under:

"15. I have carefully gone through the said case laws adduced by learned advocate for defendant No. 2. The principles laid down thereunder are well established. It was the duty on the part of plaintiff to plead in his plaint the dates when he had applied for sanction. The provisions of deemed permission to an application under section 44 is only applicable where permission is otherwise capable of sanction in law. On the other hand, the arguments adduced by learned advocate for defendant No. 2 will be helpful while deciding interim application for injunction. On the other hand, the order passed by defendant No. 5 dated 06.09.2023 and in pursuance thereof order passed on 03.11.2023 and 11.03.2024 by Tahsildar defendant No.3 and ultimately by Gram Panchayat defendant No. 2 wanted to implement the said orders, can not be challenged before civil court to make it inoperative, as there is a bar under section 149 of Maharashtra Regional Town Planning Act.

16. As stated above, on perusal of the plaint and documents on record filed by plaintiff, it emerges that, the plaintiff can not invoke two jurisdiction simultaneously for similar relief, either directly or indirectly. There is a bar under section 4 and section 11 of Maharashtra Revenue Jurisdiction Act. On the other hand, orders passed by defendant No. 5 can not be challenged before the civil court to make it inoperative or void-ab-initio when there is a separate appellate forum. In these circumstances, the present application for rejection of plaint under order VII Rule 11 of Code of Civil Procedure needs to be allowed."

8. The petitioners, after rejection of plaint, have filed the present petition and made the following prayers.

"a. By an appropriate writ, order or direction, quash and set aside the order dated 11/03/2024 (Annexure-12) passed by the Respondent no. 3 Tahsildar in the Revenue Case no. MRC/81/Revs/609/2023-24, in the interests of justice;

b. By way of appropriate interim Order be pleased to stay the effect, operation and implementation of the Order dated 11/03/2024, passed by Respondent no.3-Tahsildar, Amravati in Revenue Case No.M.R.C.-81/Rews/609/2023-24;

c. Be pleased to grant ad-interim, ex-parte Order in terms of prayer clause (b);

Or in the alternative

d. The Respondent No. 1- SDO may kindly be directed to decide the Appeal No. M.R.C.-81/Rewsa 2/2023-24 within specified period and till the decision of the above said appeal/during the pendency of the said appeal, the effect, operation and the implementation of the Order dated 11/03/2024, passed by Respondent no.3-Tahsildar, Amravati in Revenue Case No. M.R.C.-81 /Rewsa/609/2023-24 may kindly be stayed in the interests of justice;

e. During the pendency of the instant writ petition, Ad Interim reliefs in terms of the prayer clause d) may kindly be granted, in the interests of justice.

f. Grant any other relief which this Hon'ble Court deems sufficient, fit and proper in the facts and circumstances of the present case."

9. This Court by order dated 24.5.2024 directed the parties to maintain *status-quo*. The petitioners after passing of the interim order by this Court had withdrawn the appeal, though one of the prayers in the present petition was to direct the appellate authority to decide the said appeal.

10. Considering the overall conduct of the petitioners, I am not inclined to entertain the present petition. The Petition is dismissed.

11. The learned counsel for the petitioners submits that the interim order passed by this Court dated 24.5.2024 be continued for a period of four weeks to enable the petitioners to take appropriate steps in the matter. On the other hand, the learned counsel for respondent No.5 submits that considering the conduct of the petitioners, the interim order may not be continued. As the order impugned is in respect of demolition of structure, the interim order passed by this Court dated 24.5.2024 shall remain in force for a period of four weeks from today.

12. Pending Application is disposed of.

(N.R. BORKAR, J.)