



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

4 WRIT PETITION NO. 1780 OF 2024

**DAYARAM RAJARAM CHAUDHARI AND OTHERS
VERSUS
GRAMSEVEK TAKARKHEDA GRAMPANCHAYAT**

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Advocate for the Petitioner : Mr. Mr. Patil Vijay B.
Advocate for the Respondent/Sole : Mr. Jitendra V.Patil

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CORAM : SHAILESH P. BRAHME, J.
DATE : 17th FEBRUARY 2025

PER COURT :

1. Heard both sides.
2. The petitioners are challenging order dated 21.09.2023 passed below Exhibit-21 rejecting application under order 26 rule 9 of Civil Procedure Code (in short 'CPC'). They have filed R.C.S No. 36 of 2022 for injunction to remove encroachment from government land which is in possession of the respondents bearing village-panchayat property no.45 and 46 situated at Takarkheda Tq.Yawal,Dist.Jalgaon. It is the submission of learned counsel for the petitioner that trial court committed perversity in rejecting the application merely because the plaint in earlier suit was rejected. Petitioners are espousing public cause. The intention of moving application is not to collect the evidence. Interim application for injunction was already decided by the trial court. Hence, impugned order is liable to be

quashed.

3. Learned counsel for the respondents submits that suit itself has become infructuous because construction of compound-wall has already been completed. He would further submit that there is no encroachment. He would support impugned judgment and order.

4. After hearing the parties, it transpires that the recording of evidence has not been commenced in the suit. Petitioners are espousing public cause and they are concerned with the encroachment on the government land. It is the foremost duty of the respondent/village panchayat to take care of the property which is in their possession.

5. One of the reasons assigned for rejecting the application is that plaint in previous suit was rejected under order 7 rule 11, is unsustainable. However, the remaining findings recorded by the trial court are plausible and reasonable and cannot be interfered with. The application under Exhibit-21 was submitted before commencement of recording of evidence. The petitioners shall be at liberty to move the application under Order 26 rule 9 of C.P.C at further stages of proceedings especially after recording of evidence.

6. Learned counsel for the respondent has made categorical statement that there is no encroachment on the subject matter and village panchayat is ready to take care of the property in subject

matter which is in their possession.

7. I do not find any perversity or patent illegality to cause any interference in the impugned order. Hence, writ petition is dismissed.

[SHAILESH P. BRAHME, J.]

vsj..