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

WRIT PETITION NO. 3367 OF 2025

RAJENDRA PANDURANG DHONGDE AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA THROUGH COLLECTOR AND ANOTHER

AND

WRIT PETITION NO. 3374 OF 2025

AMABADAS GANGARAM CHAVAN AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA THROUGH COLLECTOR AND ANOTHER

Mr.N.N. Desale, Advocate for the petitioners (WP/3367/2025)

Mr.L.S. Mahajan, Advocate for the petitioners (WP/3374/2025)

Mr.K.S. Patil and Mr. K.B. Jadhavar, AGP for the respondent-State in both the petitions.

Mr.A.A. Fulfagar h/f. Mr. C.B. Choudhari, Advocate for respondent No.2.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 26.03.2025
PRONOUNCED ON : 10.06.2025

ORDER :-

01. These Writ Petitions arise out of judgment and order passed by the learned District Judge-5, Dhule dated 24.02.2025 passed in Misc. Civil Appeal No. 18 of 2024, thereby rejecting the appeal filed by the petitioners and confirming the order of rejection of Exh.5 application, passed by the learned 2nd Jt. Civil Judge, Junior Division, Dhule in RCS No.114 of 2024. All the petitioners in both the Writ Petitions are original plaintiffs in the Regular Civil Suit No.114 of 2014. The respondents are original defendants in the said suit.

02. The petitioners filed Regular Civil Suit with a prayer to restrain the defendants from taking possession of the shops of the plaintiffs and not to demolish the said shops and to cause any damage. A notice dated 03.04.2024 is also challenged whereby the defendant No.2 had directed to vacate the premises occupied by the shops of the petitioners, which are alleged to be encroachments on the road.

03. Defendant No.1 is the State of Maharashtra and defendant No.2 is the Municipal Council, Pimpalner. In the said suit, petitioners filed interim application below Exh. 5, which came to be rejected and consequently misc. appeal also came to be rejected and the petitioners are before this Court.

04. It is the case of defendant No.2 that the shops of the plaintiffs are on the road. They have caused encroachment. All the shops are constructed illegally. The sheds and shops are in front of building of the Municipal Council. In the year 2016 itself Officers of the PWD had informed the Grampanchayat to remove the encroachment. The Grampanchayat already passed resolution on 12.08.2016, resolving to take action against encroachments. There is also request made by the Grampanchayat to the PWD Officers to take appropriate action by

communication dated 12.04.2019. Said letter was given even to the Collector on 21.06.2019. The application was, thus, vehemently opposed.

05. The learned Trial Judge by considering the case in detail rejected the application. As stated, said order is confirmed by the District Court.

06. Learned Advocate Mr. Desale vehemently argued that the plaintiffs' possession is longstanding. There is no dispute about the said fact. Since 1995 their possession is uninterrupted and without any objection by any of the Authority. The petitioners possess licence under the Bombay Shop Act. The Municipal Council does not have any Authority to issue the notice. There is no material with the Municipal Council to show that the land belongs to the Municipal Council. Both the Courts have failed to appreciate this basic fact and have passed the order. He prays for allowing Writ Petitions and thereby allowing Exh.5 application pending the suit.

07. Learned Advocate Mr. Fulfagar for respondent No.2 submits that both the Courts have rightly considered the case of the plaintiffs.

There are no documents showing title of the plaintiffs over the land. Earlier the Grampanchayat is converted into Municipal Council i.e. defendant no.2. There is already a resolution passed by the Grampanchayat dated 12.08.2016. The Municipal Council has every authority to remove encroachment of the plaintiffs. He supports the orders passed by both the Courts.

08. Learned AGPs in the respective petitions also support the impugned orders.

09. The learned Trial Judge made specific observations about the rights of the plaintiffs and has arrived at a conclusion that the plaintiffs failed to show, even prima facie, that the possession is legal. They could not produce on record documents of title. Merely because their possession is long standing, it cannot be said to give any right to the plaintiffs to remain in possession of the land. It is further considered that the documentary evidence on record only shows that the plaintiffs came in possession of the property in the year 2015-16. There is nothing on record to indicate that the possession is since prior to 2015. The Grampanchayat has passed resolution. There are no licences in the name of plaintiff Nos. 2,5,6,7 and 8. Registration of the Shop Act Licence

in the name of the plaintiffs expired in 2004. Plaintiff Nos. 1 and 3 also could not show any convincing material. The Municipal Council has every authority under sections 340(2) and 316(2) of the Municipal Council Act. The plaintiffs concealed the material fact that already there was resolution passed by the Grampanchayat in Gramsabha dated 12.08.2016, deciding to take action against encroachments and further communication in that regard and rejected the application.

10. The above material is also considered by the learned District Judge while deciding the Misc. Civil Appeals. The learned District Judge also considered judgment in the case of **Rame Gowda V/s. S.M. Vardappa Naydu, AIR 2004 SC 4609**. By reasoned judgments both the Courts considered that mere payment of taxes would not give any right to the party to be in possession. This Court finds that both the judgments are well reasoned. Respondent No.2 by way of affidavit in reply has also produced on record notice dated 06.06.2019. The order passed by the Administrator of respondent No.2 dated 13.03.2024. All these things clearly go to show that the petitioners failed to show their right over the property. The learned Advocate Mr. Fulfagar also relied upon an order passed by this Court dated 24.02.2014 in Writ Petition No. 1440 of 2010. This Court in the said petition had dealt with the petition

seeking writ of mandamus or writ seeking direction to remove encroachment of the plaintiffs and other persons. This Court in the said order had only made ad-interim arrangement facilitating the applicants therein to approach the competent Court or Authority. In the said petition, civil application was also filed. This Court had made ad-interim arrangement. This Court finds that even this Court had not entertained the application of the similarly situated petitioners. Only they were facilitated to approach the proper Court.

11. Considering all the above, this Court does not find that any case is made out. This Court finds that when both the Courts have concurrently not accepted case of the plaintiff and when no case is made out pointing out any perversity in the observations, this Court does not find it proper to interfere with the impugned orders. The Writ Petitions, therefore, deserve to be dismissed. Hence, the Writ Petitions are dismissed with no order as to costs.

[KISHORE C. SANT, J.]

01. At this stage, the learned advocate for the petitioners prays for stay to the effect of this order.

02. The learned advocate for the respondent opposes the prayer.

03. Since the petitioners are in possession, this order shall not be implemented for a period of two (02) weeks from today in both the petitions.

[KISHORE C. SANT, J.]