

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SANTOSH
SUBHASH
KULKARNI

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WRIT PETITION NO. 3795 OF 2025

Pukharaji Rupaji Choudhari through POA
Rajesh Pukharaj Choudhari ...Petitioner

Versus

Chief Executive Officer, Nagar Panchayat
Mangaon ...Respondents

WITH

WRIT PETITION NO. 3796 OF 2025

Jayawanti Narayan Shigawan through POA ...Petitioner
Raghunath Ramchandra Dhondage

Versus

Chief Executive Officer, Nagar Panchayat
Mangaon ...Respondents

WITH

WRIT PETITION NO. 3797 OF 2025

Surendra Singh Bhatiya through POA ...Petitioner
Darshan Kaur Surendra Singh Bhatia

Versus

Chief Executive Officer, Nagar Panchayat
Mangaon ...Respondents

WITH

WRIT PETITION NO. 3798 OF 2025

Laxmi Sakharam Shinde through POA ...Petitioner
Priyanka Sakharam Shinde

Versus

Chief Executive Officer, Nagar Panchayat
Mangaon ...Respondents

WITH

WRIT PETITION NO. 3799 OF 2025

Dharamaraj Nandakai Kushawah ...Petitioner

Versus

Chief Executive Officer, Nagar Panchayat
Mangaon ...Respondents

**WITH
WRIT PETITION NO. 3800 OF 2025**

Chandulal Motilal Gupta ...Petitioner

Versus

Chief Executive Officer, Nagar Panchayat
Mangaon ...Respondents

**WITH
WRIT PETITION NO. 3801 OF 2025**

Pramod Raju Atikandan through POA
Shivaji Balkrushna Mhaske ...Petitioner

Versus

Chief Executive Officer, Nagar Panchayat
Mangaon ...Respondents

**WITH
WRIT PETITION NO. 3802 OF 2025**

Sandip Anturam Verma ...Petitioner

Versus

Chief Executive Officer, Nagar Panchayat
Mangaon ...Respondents

**WITH
WRIT PETITION NO. 3816 OF 2025**

Suresh Dattaram Hujare ...Petitioner

Versus

Chief Executive Officer, Nagar Panchayat
Mangaon ...Respondents

Mr. Anil V. Anturkar, Senior Advocate. a/w Mr. Roshan
Pandhare i/by Mr. Atharva Date, for the Petitioner in
all WPs.

Mr. Amjith M. Anandhan, a/w Mr. Sachin Ramrao Pawar, Mr.
Anish K. Valappil, Mr. Nikhil Mallelwar and Mr. Rohan
Kaiche, for the Respondent in all WPs.

CORAM: N. J. JAMADAR, J.

RESERVED ON: 9th MAY, 2025

PRONOUNCED ON: 18th JUNE, 2025

JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the
consent of the learned Counsel for the parties, heard finally.

2. The challenge in these petitions is to the judgments and orders dated 20th February, 2025 in the Misc. Civil Appeals whereby the District Judge, Mangaon, District Raigad, was persuaded to allow the appeals preferred by the respondent – defendant and thereby set aside the orders passed by the learned Civil Judge, Mangaon, on 15th July, 2024 in the suits instituted by the petitioners – plaintiffs for restraining the respondent – defendant from causing obstruction to the possession and enjoyment of the suit stalls on the basis of the notice dated 16th May, 2024.

3. As all these petitions arise out of identical facts and raise common questions, all these petitions were heard together and are being decided by this common judgment. The facts in WP/3795/2025 are taken as a representative case.

4. The background facts are as under:

4.1 The petitioner, like the petitioners in the rest of the petitions, runs a stall since the year 1960, being Stall No.10 admeasuring 10 X 10 ft. under the name and style of 'Jay Ambe Tobacco' at Mangaon ("the suit stall"). The petitioner claims the land on which the suit stall is run was allotted to the petitioner by the then Group Village Panchayat, Mangaon, the predecessor of Mangaon Municipal Council, the defendant.

4.2 The petitioner has been carrying on the business in the suit stall. Since the year 1960, the respondent has collected rent as well as taxes from the petitioner. Receipts have been issued.

4.3 On 17th January, 2024, the respondent issued a notice to the petitioner calling upon him to vacate the suit stall as the suit stall was required to be demolished for the purpose of construction of the new building for the Municipal Council. The petitioner gave reply to the said notice on 18th January, 2024.

4.4 Apprehending highhanded action, the petitioner had instituted a suit being RCS/20/2024 assailing the legality and validity of the said notice and to restrain the respondent from acting on the basis of the said notice. In the said suit, on 26th February, 2025, an order of temporary injunction was passed by the learned Civil Judge. The respondent preferred Misc. Civil Appeal No.12/2024 before the District Court at Mangaon. However, on 1st April, 2024, the said appeal was disposed of as not pressed.

4.5 The petitioner asserts, the respondent addressed second notice on 16th May, 2024 alleging that the land covered by the suit stall was allotted to the petitioner on temporary basis. The petitioner had erected structure over the said land without obtaining the permission of the then village panchayat. The

petitioner has carried out unauthorized development and encroachment. Secondly, there was no agreement between the Municipal Council and the petitioner as envisaged by the provisions contained in Section 92 of The Maharashtra Municipal Councils, Nagar Panchayats And Industrial Townships Act, 1965, ("the Act, 1965"). Thirdly, the suit property was within the control line of Mumbai-Goa National Highway No.66. It was, therefore, necessary to remove the suit property. The petitioner was called upon to remove the structure and vacate the suit stall within a period of 8 days lest the respondent would initiate the action of removal.

4.6 The petitioner again instituted a suit being RCS/97/2024 assailing the legality and validity of the said notice and the proposed action and sought declaration and consequential injunctive relief. In the said suit, the petitioner filed an application for temporary injunction.

4.7 By an order dated 15th July, 2024, the learned Civil Judge, Mangaon, was persuaded to grant temporary injunction and thereby restrain the respondent Council from acting upon the impugned notice dated 16th May, 2024 till the final decision of the suit opining that a *prima facie* case was made out in favour of the petitioner as the petitioner had been in the occupation of

the suit stall since the year 1960, the respondent Council has accepted rent and taxes, the notice was vague on the aspect of the extent of the alleged encroachment and the fact as to whether the petitioner was a tenant of the Municipal Council warranted adjudication at the trial.

4.8 Being aggrieved, the respondent – defendant preferred appeal before the District Court. By the impugned judgment and order, the learned District Judge was persuaded to allow the appeal primarily relying upon a map placed on the record of the District Court by the respondent, to show that the suit property fell within the control line from the centre of the National Highway. The learned District Judge was of the view that the fact that Municipal Council had accepted the rent and taxes was of no significance. Since the construction was unauthorized and illegal it was required to be demolished. Support was sought to be drawn from the order passed by the Division Bench of this Court on 22nd April, 2019 in PIL/42/2015, whereby directions were given to take action of removal of encroachment over the National Highway.

5. Being aggrieved, the plaintiffs have invoked writ jurisdiction of this Court.

6. I have heard Mr. Anturkar, the learned Senior Advocate for the petitioners, and Mr. Amjith Anandhan, the learned Counsel for the respondent, at some length. The learned Counsel for the parties took the Court through the pleadings and the material on record.

7. Mr. Anturkar, the learned Senior Advocate for the petitioners, submitted that the learned District Judge transgressed the jurisdictional limits in setting aside a discretionary order passed by the trial court, and that too on the basis of material, which was tendered before the Court on the very day the appeal came to be decided. Mr. Anturkar would urge, the learned District Judge ought to have given an adequate opportunity to the petitioners to meet the case sought to be set up before the Appellate Court by banking upon the survey map, which was tendered on the day the appeal came to be disposed of. No effective opportunity of hearing was provided to the petitioners – plaintiffs. The petitioners had objected to the production of the map. If the learned District Judge was inclined to allow production of the map, the least that was expected was to provide an opportunity to the petitioners to demonstrate as to how the map could not be made the foundation of the determination. Therefore, on account of grave

procedural irregularity the impugned order deserves to be set aside and the matter remitted to the Appellate Court for afresh determination.

8. Even on the merits of the matter, Mr. Anturkar would urge, the learned District Judge was clearly in error in interfering with the order passed by the trial court. The learned Civil Judge has correctly noted the variance in the stand of the Municipal Council in the first and second notice. In fact, the order of injunction passed in the first suit i.e. RCS/20/2024, still operates. The miscellaneous appeal preferred thereagainst was withdrawn. The grounds on which the petitioners were called upon to vacate the suit stalls under the second/impugned notice are irreconcilable with the claim of the respondent in the first notice.

9. Mr. Anturkar would further urge even the map on which reliance was placed by the learned District Judge *ex facie* does not sustain the impugned order. Mr. Anturkar submitted that there were fundamental challenges to the veracity and correctness of the map, both on the aspect of the procedure followed while drawing the map and the inferences drawn by the Cadestal Surveyor. In fact, in a prior communication dated 31st January, 2024, the Deputy Superintendent Land Records,

Mangaon, had informed that the map and demarcation certificate were not available. Lastly, Mr. Anturkar would urge, the Municipal Council was not the competent authority to remove the encroachment over the National Highway. The Control of National Highways vest with the authorities constituted under The Control of National Highways (Land and Traffic) Act, 2002. Under Section 24 of the said Act, the Highway administration or any officer authorized by such administration is empowered to remove unauthorized occupation. The Municipal Council having suffered the order of temporary injunction, in the previous suit, usurped the authority of the Highway Administration and issued the impugned second notice. Therefore, the impugned order deserves to be quashed and set aside.

10. Mr. Anandhan, the learned Counsel for the respondent – Municipal Council, would urge that the petitioners are attempting to cling to the purported inconsistency in the first notice and the impugned second notice and raising all sorts of technical defences. Mr. Anandhan would urge that the hard facts of the case must enter the judicial determination. First, the subject stalls are located on the National Highway. A Division Bench of this Court has passed an order directing the

removal of encroachments over the National Highway, in a time frame. The survey map indicates that the subject stalls are within the ambit of the control line. To add to this, the petitioners have no semblance of right to hold on to the suit properties.

11. Mr. Anandhan canvassed a three-pronged submission as regards the action of removal initiated by the Municipal Council. Firstly, the action was in exercise of the power under Section 179 of the Act, 1965 as the petitioners were the temporary occupants of the suit property. The claim of the petitioners that they are the tenants does not merit countenance as no leasehold rights were created in favour of any of the petitioners by the erstwhile Mangaon Village Panchayat under the provisions of Section 55 of the Maharashtra Village Panchayats Act, 1959 or by the defendant under Section 92 of the Act, 1965. No resolution has been passed by the Municipal Council to grant or renew the lease beyond the initial period of three years. Thus, the fact that the petitioners have been in the occupation of the suit stalls, does not by itself legalize their possession and enjoyment of the suit property. The payment of ground rent and/or taxes is of no assistance to the petitioners. To buttress this submission Mr. Anandhan placed a very strong reliance on

a judgment of this Court in the case of *Municipal Council, Pusad vs. Kundanal Mohanlal Jaiswal and ors.*¹.

12. Secondly, the petitioners are occupying the land within the control line of National Highway No.66. The High Court by its order dated 22nd April, 2019 in PIL/42/2015 has issued specific directions for removal of such occupants. The challenge to the consideration of the map by the learned District Judge, according to Mr. Anandhan, is not at all sustainable. The provisions contained in Maharashtra Land Revenue (Village, Town and City Survey) Rules, 1969 have no application at all to the survey under the Maharashtra Highways Act, 1955, which governs the preparation of the maps in connection with highways, submitted Mr. Anandhan. Under the Maharashtra Highways Act, 1955, the State Government is empowered to take action for removal of the unauthorized occupants.

13. Thirdly, Mr. Ananadhan would urge the impugned notice also refers to the necessity of the removal of the subject stalls as it is causing obstruction in the construction of new Municipal Council building. In substance, Mr. Anandhan would urge, as the petitioners occupation of the suit stalls is completely illegal, the petitioners cannot be permitted to take advantage of the

1 WP/886/2006 dtd.31/1/2007.

procedural infirmities, if any, and thereby continue to cause grave prejudice to the public at large on account of the situation of the suit stalls within the control line.

14. I have given anxious consideration to the submissions canvassed across the bar, especially in the light of the assertion of the Municipal Council that the subject stalls cause obstruction to the free movement of the traffic on the National Highway. There could be no duality of opinion that, an unlawful occupant cannot be permitted to squat over the public premises much less a National Highway, by taking undue advantage of the infirmities in the action on the part of the instrumentalities of the State. At the same time, the Court cannot be oblivious to the fundamental defect in procedure and apparent jurisdictional errors.

15. In the case at hand, in the light of the view which this Court is ultimately persuaded to take, it may not be necessary to delve deep into the thickets of facts. Suffice to note that there is an apparent disconnect between the stand of the respondent – Municipal Council as regards the status of the suit stalls and that of the petitioners. In the first notice dated 17th January, 2024, it was mentioned that the stalls belonged to Municipal Council and the removal of those stalls was necessary to

facilitate the construction of new Municipal Council building. In contrast, in the second impugned notice dated 16th May, 2024, it was mentioned that the land was given to the petitioners for temporary period on ground rent and the petitioners had erected structures thereon without obtaining the permission of the erstwhile Village Panchayat or the Municipal Council. The construction was illegal and in the nature of encroachment. In the first notice, there was no reference to the suit stalls falling within the control line of National Highway No.66. The second impugned notice sought to draw support to the action of removal on the ground that the suit stalls are within the control line of the Highway, and pursuant to the directions of the High Court they were required to be removed.

16. This *prima faice* disconnect between the stand of the Municipal Council coupled with material to show that the Municipal Council had accepted the ground rent and taxes from the petitioner persuaded the learned Civil Judge to grant temporary injunction.

17. At this juncture, the jurisdictional limits in an appeal against a discretionary order assume significance. It is trite, an appeal against a discretionary order is an appeal on principle. Ordinarily, the Appellate Court is not expected to interfere with

the exercise of discretion in the matter of grant of injunction by the trial Court and substitute its own discretion for the same, except where it can be demonstrated that the discretion has been exercised arbitrarily or perversely, or the impugned order is contrary to the settled principles of law. An arbitrariness in the exercise of discretion or perversity in the order passed by the trial Court can arise where the injunction has been granted sans material or the trial court has declined to grant temporary injunction, despite existence of justifiable material.

18. A profitable reference in this context can be made to a three Judge Bench decision of the Supreme Court in the case of *Wander Ltd. and Anr. V/s. Antox India P. Ltd.*², wherein the following observations have been made :

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a

2 1990 (Supp) SCC 727.

different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Pvt. Ltd. V/s. Pothan Joseph (1960) 3 SCR 713* :

“... These principles are well established, but as has been observed by Viscount Simon in *Charles Oseption & Co. v. Johnston* the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case.

The appellate judgment does not seem to defer to this principle.”

(emphasis supplied)

19. In the case of *Shyam Sel and Power Ltd. and Anr. V/s. Shyam Steel Industries Ltd.*³, the Supreme Court observed that the aforesaid judgment in the case of *Wander Ltd.* (Supra), has been guiding the appellate courts in the country for decades while exercising their appellate jurisdiction considering the correctness of the discretion and jurisdiction exercised by the trial courts for grant or refusal of interlocutory injunctions.

20. In the case of *Seema Arshad Zaheer and Ors. V/s. Municipal Corporation of Greater Mumbai and Ors.*⁴ the Supreme Court expounded the principles which govern the interference by the appeal Court in the discretionary order passed by the trial Court. The observations in paragraph 32 are material, and, hence, extracted below:

3 (2023) 1 SCC 634.

4 (2006) 5 SCC 282.

“32. Where the lower court acts arbitrarily, capriciously or perversely in the exercise of its discretion, the appellate court will interfere. Exercise of discretion by granting a temporary injunction when there is 'no material', or refusing to grant a temporary injunction by ignoring the relevant documents produced, are instances of action which are termed as arbitrary, capricious or perverse. When we refer to acting on 'no material' (similar to 'no evidence'), we refer not only to cases where there are total dearth of material, but also to cases where there is no relevant material or where the material, taken as a whole, is not reasonably capable of supporting the exercise of discretion. In this case, there was 'no material' to make out a *prima facie* case and therefore, the High Court in its appellate jurisdiction, was justified in interfering in the matter and vacating the temporary injunction granted by the trial court.”

(emphasis supplied)

21. Another three Judge Bench of the Supreme Court in the case of *Skyline Education Institute (India) Pvt. Ltd. V/s. S.L.Vaswani and Anr.*⁵ after referring to the previous precedents, culled out the principles in the following words :

“22. The ratio of the abovenoted judgments in that once the Court of first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed before the Court and is supported by cogent reasons, the appellate court will be loath to interfere simply because on a *de novo* consideration of the matter it is possible for the appellate Court to form a different opinion on the issues of *prima facie* case, balance of convenience, irreparable injury and equity.”

(emphasis supplied)

22. Keeping in view the aforesaid principles, reverting to the facts of the case, it appears that the learned District Judge allowed the application for production of the map on 20th February, 2025. And, on the very day, the appeal came to be

5 (2010) 2 SCC 142.

decided primarily relying upon the said map. The Court finds that the petitioners had raised objections to the map while opposing the production thereof. It was, *inter alia*, contended that the said map was prepared without notice to the petitioners and the findings therein were not correct. In the face of these objections, the learned District Judge, in all fairness, must have given an adequate opportunity to the petitioners to meet the case sought to be set up before the Appellate Court.

23. The situation which thus emerges is that the case is not one of the Appellate Court taking a different view of the matter on the basis of the very material which was before the trial court but that of the Appellate Court considering a vital material for the first time in the appeal and determining the appeals principally on the strength thereof, without providing an opportunity to the petitioners/plaintiffs.

24. Undoubtedly, in view of the provisions contained in Order XLIII Rule 2 of the Code, the procedure prescribed under the Rules of Order XLI applies to the appeals from orders. The Appellate Court is empowered to permit a party to produce additional evidence. But, the Court ought to ensure that the opponent gets an efficacious opportunity to meet the case set up by producing additional evidence/material.

25. The endeavour of Mr. Anandhan to urge that *de hors* the map and especially in the light of the provisions contained in Section 92 of the Act, 1965 in the absence of agreement and resolution of the Municipal Council, the petitioners are otherwise not entitled to hold on to the suit stalls does not take the matter any further. From the perusal of the impugned order, it becomes evident that the fact that in the map the subject stalls were shown within the control line principally weighed with the learned District Judge in allowing the appeals. It is not the case that the learned District Judge was persuaded to allow the appeals on the basis of the material available before the trial court and took into account the map which was produced on the date of the final disposal of the appeal, just to lend assurance to the findings recorded by the learned District Judge.

26. In the aforesaid view of the matter, the impugned order cannot be sustained and the appeals deserve to be remitted back to the learned District Judge for afresh determination, after providing an effective opportunity of hearing to the petitioners – plaintiffs, including to raise objections to the map which was produced by the respondent, on the very day, the appeals were decided.

27. In the light of the view this Court is persuaded to take, it may not be appropriate to delve into the other submissions canvassed on behalf of the parties lest the Appellate Court may be influenced by the observations made by this Court. Suffice to clarify that all contentions are kept open for consideration by the Appellate Court.

28. Hence, the following order:

: O R D E R :

- (i) The petitions stand allowed.
- (ii) The order impugned in each of the petitions stand quashed and set aside.
- (iii) The order passed by the trial court in each of the suits on the application for temporary injunction stands restored.
- (iv) The appeals stand remitted back to the Court of the learned District Judge, Mangaon.
- (v) The parties shall appear before the learned District Judge, Mangaon, on 30th June, 2025.
- (vi) The plaintiff(s) – respondent(s) in the respective appeal(s) is/are at liberty to file an affidavit to deal with the map tendered before the Appellate Court on 20th February, 2025, on or before 14th July, 2025.

(vii) The Appellate Court shall hear the appeals afresh and consider the affidavit/objections to the map and decide the appeals in accordance with the law as expeditiously as possible and, preferably, within a period of two months from 14th July, 2025.

(viii) The petitions stand disposed.

No costs.

[N. J. JAMADAR, J.]