

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 13214 OF 2025

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

Versus

Chief Executive Officer, Nagar Panchayat
Mangaon, District Raigad ...Respondent

WITH

WRIT PETITION NO. 13216 OF 2025

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

Versus

Chief Executive Officer, Nagar Panchayat
Mangaon, District Raigad ...Respondent

WITH

WRIT PETITION NO. 13218 OF 2025

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

Versus

Chief Executive Officer, Nagar Panchayat
Mangaon, District Raigad ...Respondent

WITH

WRIT PETITION NO. 13219 OF 2025

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

Versus

Chief Executive Officer, Nagar Panchayat
Mangaon, District Raigad ...Respondent

WITH

WRIT PETITION NO. 13220 OF 2025

Dharamaraj Nandakai Kushawah ...Petitioner

Versus

Chief Executive Officer, Nagar Panchayat
Mangaon, District Raigad ...Respondent

SANTOSH
SUBHASH
KULKARNI

Digitally signed by
SANTOSH SUBHASH
KULKARNI
Date: 2025.12.17
19:12:10 +0530

**WITH
WRIT PETITION NO. 13222 OF 2025**

Chandulal Motilal Gupta ...Petitioner

Versus

Chief Executive Officer, Nagar Panchayat
Mangaon, District Raigad ...Respondent

**WITH
WRIT PETITION NO. 13224 OF 2025**

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

Versus

Chief Executive Officer, Nagar Panchayat
Mangaon, District Raigad ...Respondent

**WITH
WRIT PETITION NO. 13225 OF 2025**

Sandip Anturam Verma ...Petitioner

Versus

Chief Executive Officer, Nagar Panchayat
Mangaon, District Raigad ...Respondent

**WITH
WRIT PETITION NO. 13226 OF 2025**

Suresh Dattaram Hujare ...Petitioner

Versus

Chief Executive Officer, Nagar Panchayat
Mangaon, District Raigad ...Respondents

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

Mr. S. M. Gorwadkar, Senior Advocate a/w Mr. Sachin
Pawar, Mr. Sujay Gangal and Mr. Devang Mhatre, for
the Respondent in all WP.

**CORAM: N. J. JAMADAR, J.
RESERVED ON: 14th OCTOBER, 2025
PRONOUNCED ON: 17th DECEMBER, 2025**

JUDGMENT:-

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

2. These petitions under Article 227 of the Constitution of India assail the legality, propriety and correctness of the judgment and order dated 12th September, 2025 in the Misc. Civil Appeals, whereby the District Judge, Mangaon, District Raigad, was persuaded to allow the appeals preferred by the respondent – defendant Nagar Panchayat 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 to restrain 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, issued by the defendant.

3. In fact, this is the second round of litigation before this Court. The impugned orders have been passed by the learned District Judge, post remand of the appeals pursuant to the order dated 18th June, 2025 passed in WP/3795/2025 and connected petitions, by this Court.

4. 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/13214/2025 are taken as a representative case.

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 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 stall was within the control line of Mumbai-Goa National Highway No.66. It was, therefore, necessary to remove the suit stall. 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 an appeal before the District Court. By the judgment and order dated 20th February, 2025, 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.

4.9 In the WP/3795/2025 and connected petitions, preferred by the petitioners, assailing the aforesaid order passed by the learned District Judge, this Court was persuaded to intervene as the learned District Judge had allowed the application for production of the map tendered on behalf of the defendant on 20th February, 2025, and, on the very day, allowed the appeals primarily relying upon the said map without providing an adequate opportunity to the petitioner to meet the case sought to be set up by the defendant – respondent, before the Appellate Court. Thus, the impugned order in each of those petitions was quashed and set aside, the order of temporary injunction passed by the trial Court stood restored and the appeals were remitted back to the Court of the learned District Judge, Mangaon, for fresh determination, after providing an opportunity to the petitioners – plaintiffs to file an affidavit to deal with the map tendered before the Appellate Court on 20th February, 2025.

4.10 The petitioners filed an additional affidavit on 14th July, 2025 before the District Judge. After fresh appraisal of the material on record and the submissions canvassed on behalf of

the defendants, by the impugned order, the learned District Judge was again persuaded to allow the appeals preferred by the defendants observing, *inter alia*, that the learned trial Judge committed an error in laying emphasis on the factum of occupation of the stalls by the petitioners without considering the fact that the petitioners had no right to occupy the stalls, which were within the proscribed limits of the control line of Highway. In the view of the learned District Judge, the balance of convenience was in favour of the defendants and general public, which would be deprived of the right to use the National Highway to the fullest.

5. Being aggrieved, the petitioners have again invoked the writ jurisdiction.

6. I have heard Mr. Anturkar, the learned Senior Advocate for the petitioners, and Mr. S. M. Gorwadkar, the learned Senior Advocate for the respondent, at some length. With the assistance of the learned Counsel for the parties, I have perused the material on record.

7. Mr. Anturkar, the learned Senior Advocate for the petitioners, would submit that though the learned District Judge followed the letter of the remand order, yet, did not adhere to the spirit thereof. The learned District Judge did not

appreciate the foundational objections taken by the petitioners to the admissibility and reliability of the map, which indicates that the suit structures are within the control line. It was submitted that no material was placed before the learned District Judge to show as to who has made the interpolation in the map to show the control line in red. Though the learned District Judge noted the inconsistency in the map, copy of which has been duly furnished to the petitioners by the Deputy Superintendent of Land Records, the learned District Judge failed to fully appreciate the implications thereof. In the facts and circumstances of the case, according to Mr. Anturkar, reliance on the map was completely misplaced.

8. As a second limb of the submission, Mr. Anturkar would urge, the learned District Judge downplayed the inconsistency in the reasons ascribed by the officers of defendant No.1 – Nagar Panchayat, in the two notices issued by the defendant – Nagar Panchayat. The learned District Judge was in error in ignoring the glaring inconsistency in the grounds on which the removal of suit stall was sought, on the count that there was non-compliance of the provisions contained in Section 92 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (“the Act, 1965”),

9. Lastly, Mr. Anturkar would urge that, there is an overwhelming material to show that, the petitioners have been in possession of the subject stalls since more than 50 years. The petitioners have paid the ground rent to the defendant – Nagar Panchayat. All the requisite licences are in place. In this view of the matter, even if there is non-compliance of the provisions contained in Section 92(3) of the Act, 1965, the petitioners cannot be evicted from the suit stalls and deprived of their livelihood, without following the due process of law. In the least, the petitioners are the licencees, and in the absence of termination of licence, the learned District Judge ought not to have interfered with the exercise of discretionary jurisdiction by the trial Court.

10. In opposition to this, Mr. Gorwadkar, the learned Senior Advocate for the respondent – Nagar Panchyat, would urge that the map in question was duly forwarded by the National Highway Authority after making the necessary endorsement as regards the structures within the control line. Therefore, the endeavour on the part of the petitioners to draw a mileage by pointing out some inconsistency in the earlier map and the map which was tendered before the Appellate Court on 14th February, 2025 can not be countenanced. Mr. Gorwadkar would urge that,

the specific case of respondent – defendant that, the subject stalls were within the control line, as spelled out in the show cause notice dated 6th May, 2024, was not at all controverted by the petitioners. Taking the Court through the contents of the reply to the said notice on behalf of the petitioners, it was submitted that the fact that the subject stalls are within the control line has not been disputed at all. In view thereof, according to Mr. Gorwadkar, the learned District Judge, was justified in correcting the error which the learned Civil Judge had committed.

11. Mr. Gorwadkar would urge in the face of statutory restrictions in the matter of allotment of the property of the Nagar Panchayat beyond nine years, even on a lease, the mere longstanding occupation of the petitioners was of no avail and, thus, no *prima facie* case was made out. In any event, the balance of convenience firmly tilts in favour of the defendant as the suit stalls are obstructing the free flow of traffic on a National Highway thereby causing grave prejudice to general public. The petitioners cannot be permitted to perpetuate their unlawful occupation to the prejudice of the members of the public.

12. As the learned District Judge has interfered with exercise of discretion by the trial Court, at the outset, it may be appropriate to keep in view the jurisdictional limits in an appeal against the discretionary order, on the one part, and also interference by this Court in exercise of the supervisory jurisdiction with the order passed by the Court below, on the other part.

13. An appeal against a discretionary order is an appeal on principle. Ordinarily the Appellate Court is not expected to interfere with exercise of discretion in the matter of grant of injunction by the trial Court and substitute its own view for the one taken by the trial Court, except in cases it could be demonstrated that the discretion has been exercised arbitrarily or perversely or the impugned order is contrary to the settled principles of law.

14. In the case of *Skyline Education Institute (India) Pvt. Ltd. V/s. S.L.Vaswani and Anr.*¹, the Supreme Court after adverting to the previous pronouncements, enunciated 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

1 (2010) 2 SCC 142.

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.

15. In exercise of supervisory jurisdiction, this Court is not expected to re-evaluate, re-weigh and review the evidence/material on the basis on which the Court/Tribunal below has passed the impugned order. The High Court cannot act as an Appellate Court would do. Nor can the High Court substitute its view for the one taken by the Court below. The High Court can legitimately intervene if the Court below has committed a jurisdictional error or the impugned order suffers from patent error of law or perversity which stares in the face.

16. The contours of writ jurisdiction were illuminatingly postulated by a Constitution Bench of the Supreme Court in the case of *Rajendra Diwan vs. Pradeep Kumar Ranibala and another*² as under:

“85. The power of superintendence conferred by Article 227 is, however, supervisory and not appellate. It is settled law that this power of judicial Superintendence must be exercised sparingly, to keep subordinate courts and tribunals within the limits of their authority. When a Tribunal has acted within its jurisdiction, the High Court does not interfere in exercise of its extraordinary writ jurisdiction unless there is grave miscarriage

2 (2019) 20 Supreme Court Cases 143.

of justice or flagrant violation of law. Jurisdiction under Article 227 cannot be exercised “in the cloak of an appeal in disguise”.

86. In exercise of its extraordinary power of superintendence and/or judicial review under Articles 226 and 227 of the Constitution of India, the High Courts restrict interference to cases of patent error of law which go to the root of the decision; perversity; arbitrariness and/or unreasonableness; violation of principles of natural justice, lack of jurisdiction and usurpation of powers. The High Court does not re-assess or re-analyze the evidence and/or materials on record. Whether the High Court would exercise its writ jurisdiction to test a decision of the Rent Control Tribunal would depend on the facts and circumstances of the case. The writ jurisdiction of the High Court cannot be converted into an alternative appellate forum, just because there is no other provision of appeal in the eye of law.”

17. In a case of the present nature, where the Appellate Court has exercised the jurisdiction to correct the perceived error in exercise of discretion by the trial Court, the inquiry by this Court would be to assess whether there were circumstances which justified the exercise of such appellate jurisdiction. If this Court finds that there were circumstances which rendered the exercise of appellate jurisdiction to correct the error in exercise of discretionary jurisdiction by the trial Court, this Court would not be justified in interfering with the order passed by the Appellate Court, even if it were to take a different view of the matter on merits.

18. To begin with, it is necessary to note that, the case with which the petitioners approached the trial Court. Incontrovertibly, the suit stalls about Mumbai – Goa National Highway. The plaintiffs claim that, the land underneath the

stalls was given on lease to the plaintiffs, and they have regularly paid the ground rent, apart from the taxes and cess. The plaintiffs have been running diverse businesses in the suit stalls. Initially a notice was served on 17th January, 2024 to vacate the suit stalls purportedly to facilitate the construction of a new Nagar Panchayat Building. In the second show cause notice dated 16th May, 2024 the legality and validity of which was impugned in the instant suit, it was alleged that, the action was required to be taken in pursuance of the directions in WP/42/2015 dated 22nd April, 2019 to remove the encroachment and the suit stalls were within the control line of Mumbai – Goa National Highway. In addition, it was contended that, the demolition of the suit stalls was necessary as the new Nagar Panchayat Building cannot be constructed without removing the suit stalls.

19. It is the aforesaid inconsistency in pre-suit notices, the longstanding possession of the plaintiffs and the question of the applicability of the provisions contained in Section 92 of the Act, 1965 being debatable, weighed with the learned Civil Judge to grant the temporary injunction.

20. Indeed, in the first notice dated 17th January, 2024, there was no reference to the fact that, the suit stalls were within the

control line. The learned District Judge was of the view that the aforesaid inconsistency, or for that matter, the omission on the part of the officers of the defendant to mention the said fact, was of no significance, if the controversy was viewed in the light of the governing legal provisions and principles. Whether this approach of the learned District Judge is justifiable?

21. Section 92 of the Act, 1965 reads as under:

“Section 92. (1) No Council shall transfer any of its immovable property without the sanction of the State Government.

(2) A proposal of such transfer shall be accompanied by resolution of the Council passed at a meeting by a majority of not less than two-thirds of the total number of Councilors and shall in no way be inconsistent with the rules made in this behalf by the State Government.

(3) Notwithstanding anything contained in sub-section (1), a Council may lease its immovable property for a period not exceeding three years, and the lessee shall not be allowed to make any permanent constructions on such immovable property. Such lease may be renewed by the Council beyond the period of three years. So, however, that the total period of any lease shall not exceed [nine years].

No such lease or any renewal thereof shall be granted unless supported by a resolution passed at a meeting of the Council.

[92A. Subject to the rules, if any, made in this behalf, the Council may transfer any of its movable properties.]”

22. Evidently, there is a complete prohibition for transfer of any immovable property by the Municipal Council without the sanction of the State Government. A proposal to transfer the Municipal property is required to be passed by a special majority of not less than 2/3 of the total members of the Council. Furthermore, such proposal cannot be in derogation of

the rules made by the State Government. Though sub-section (3) of Section 92 empowers the Municipal Council to give its property on lease for a term not exceeding three years, yet, the lessee cannot be permitted to make any permanent construction on such property. The maximum term of lease is statutorily capped at nine years. A lease or renewal thereof can only be granted by a resolution passed in the meeting of the Council.

23. The legislature has provided aforesaid safeguards being alive to the risk of the Municipal properties being indiscriminately transferred and allotted for reasons which may not subserve larger public interest. The restrictions on transfer of the immovable property and even lease thereof are meant to ensure that the public trust, in which the properties are held by the Municipal Council, is not betrayed to advance private interest.

24. In the case of *Municipal Council, Pusad vs. Kundanal Mohanlal Jaiswal and ors.*³, on which reliance was placed on behalf of the defendant, the object of Section 92 and the approach expected of the Court in interpreting and applying the said provision was expounded as under:

“8. It is apparent that their individual grievance cannot be compared with public injury and in absence of even a prima

3 2007 (3) All MR 86.

facie right in their favour, they are not entitled to grant of temporary injunction. Insistence upon observance of "due procedure" by these respondents is totally unwarranted. Even if all plaint allegations are presumed to be true, the same fall short to make out any case of legal injury in their favour. The application of mind by Appellate court is unsustainable. Appellate court ought to have noticed that an action to be binding on body corporate like petitioner or to operate to the prejudice of general public must be stated and shown to be in accordance with provisions of Municipal Act. The Appellate Court was duty bound to notice this aspect and ought not to have confused possession only as conferring any legal right upon respondents. Resolution of Municipal Council or any of its members or its chief officer cannot make their action binding unless and until it is in accordance with provisions mentioned above. Procuring of some trading licence or no objection from Municipal Council, paying some charges to it towards such occupation of land does not create any legal relationship between Municipal Council and such person. Influential traders or businessmen may try to take undue advantage of their position by getting any orders or resolutions from such bodies and therefore only, legislature has circumscribed those powers by providing for appropriate measures by way of control. It is apparent that Appellate Court has exercised jurisdiction not available to it in the matter by protecting unauthorised and apparently illegal possession of respondents to the prejudice of public at large and has hampered the development work specified by Development Plan. It is further to be noticed that respondents after receipt of notice to remove encroachment from Municipal Council, till today got sufficient time to make alternate arrangements but then as already stated above the wish to prosper at the cost of general public which cannot be tolerated at all."

(emphasis supplied)

25. It is not the case of the plaintiffs that the alleged lease of the land in favour of any of the plaintiffs was by a resolution passed by the defendant Municipal Council or in conformity with the provisions under Section 55 of the Maharashtra Village Panchayats Act, 1959 when the land was initially allotted by erstwhile Mangaon Village Panchayat, the precursor of the defendant. Neither there is a Lease Deed nor any document was

placed on record to support the claim of the allotment of the land to the plaintiffs as lessees. In this backdrop, the mere payment of the ground rent or taxes or cess for the occupation of the suit stalls would not *prima facie* legitimize the occupation of the plaintiffs. Had lease been executed in favour of the plaintiffs, in a best case scenario, they would have been entitled to occupy the land for nine years, in the maximum. The plaintiffs claim to be in possession for over 50 years.

26. Realising the difficulty in pursuing a case of the plaintiffs being lessees in respect of the suit properties, Mr. Anturkar would urge that, in the least, the plaintiffs have been in the occupation of the suit stalls as licencees. Still, the defendant cannot evict the plaintiffs without following the due process of law. Even the licence has not been terminated, urged Mr. Anturkar.

27. I am afraid the aforesaid submission advances the cause of the plaintiffs. The statutory restrictions in the matter of transfer of the Municipal property absolutely, or transfer of interest therein by way of lease, cannot be permitted to be circumvented by contending that the plaintiffs being the licencees are entitled to protect their possession till they are dispossessed by following due process of law.

28. This takes me to the submission forcefully canvassed by Mr. Anturkar that the map which was tendered before the Appellate Court could not have been taken into account as there is clear discrepancy in the endorsements on the said map and the map that has been furnished to the plaintiffs by the Deputy Superintendent, Land Records. Whether the suit stalls are within the control line of Mumbai – Goa National Highway is a matter which can only be adjudicated after the parties adduced evidence. Thus, the learned District Judge committed an error in law, in passing the impugned order on the basis of the map, the genuineness and reliability of which is debatable.

29. At the first blush, the submission appears attractive. However, there is material on record to indicate that the map in question was forwarded to the Municipal Council by the Executive Engineer, National Highways, Sub-Division, Mahad, vide letter dated 14th February, 2025. It clearly records that, the said Authority had indicated the Highway line and the control line on the map prepared by the Deputy Superintendent, Land Records. The Municipal Council was directed to take steps to remove the structures which were within the control line of the National Highway. This document singularly demolishes the objection sought to be raised on behalf of the

plaintiffs in regard to the genuineness and the reliability of the map.

30. As noted above, the suit stalls about the National Highway. Indisputably the National Highway runs through Mangaon town; which initially had a village panchayat. Under the Government Resolution dated 5th August, 2019, in exercise of the power under Section 154 of the Maharashtra Regional and Town Planning Act, 1966, the State Government has fixed the control line at 3 to 6 meters from the edge of the National Highway. The control line shown in the map from the edge of the National Highway is *prima facie* in pursuance of the said directive.

31. In the light of the aforesaid material on record, the learned District Judge was justified in interfering with the exercise of the discretion by the trial Court. As the plaintiffs occupation of the subject stalls is in the teeth of the statutory restrictions in the matter of the transfer of the Municipal property and there is incontrovertible material to show that the suit stalls about the National Highway and fall within the control line, the learned District Judge correctly exercised the jurisdiction to interfere with the discretionary order. Resultantly, in exercise of

supervisory jurisdiction, this Court does not find any justifiable reason to interfere with the impugned orders.

32. The conspectus of the aforesaid consideration is that the petitions deserve to be dismissed.

33. Hence, the following order:

: O R D E R :

(i) The petitions stand dismissed.

(ii) Rule discharged.

No costs.

[N. J. JAMADAR, J.]