



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.5458/2024

Janardhan Pudlik Wankhede and another
Vs.
Govinda Duryodhan Akhare and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mrs. Sonali Saware Gadhwane, Advocate for petitioners
Shri R.D. Karode, Advocate for respondent Nos.1 to 4 and 8
Ms D.I. Charlewar, AGP for respondent Nos.9 and 10/State

CORAM : SMT. M.S. JAWALKAR, J.
DATED : 18/02/2025

Heard the learned Counsel for the respective parties.

2. The contention of the petitioners on the basis of judgment of this Court in ***Sandip Bhagvatrao Bhakare Vs. Santosh Mohanlal Dave and others 2022 (2) Mh.L.J. 516***, wherein it is held that provisions of Mamlatdars' Courts Act do not confer any power upon Mamlatdar, to issue any interim orders or grant any interim relief by way of temporary injunction.

3. Learned Counsel for petitioners also relied on the judgment in ***Jesus Sudhir Lall Vs. Kuljitsingh Gurudev Singh Birdi and others***, in Writ Petition No.8798 of 2021 of principle seat of this Court. In both these above referred judgments, the judgment of the Hon'ble Apex Court in ***Sakiri Vasu Vs. State of***

Uttar Pradesh (2008) 2 SCC 409, were not brought to the notice of the Court.

4. In the said matter, the Hon'ble Apex Court while applying the doctrine of implied powers, observed in para 18 that when the power is given to an authority to do something it includes such incidental or implied powers which would ensure the power to do all that things. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant in itself effective. Where an act confers jurisdiction, it impliedly also grants power of doing all such acts or employ such means as are essentially necessary for its execution.

5. It is further observed that the Court must be deemed to possess by necessary intendment all such powers as are necessary to make its order effective. As this judgment of the Hon'ble Apex Court was not brought to the notice of the Court, in the case of ***Sandip*** as well as in ***Jesus Sudhir Lall (supra)***, it is held by this Court in ***Manorati Mukund Gaude Vs. Guru Sheddu Gaude, 2024 (4) ABR 524***, that judgments are required to be considered as per incuriam and cannot be considered as law laid down.

6. The learned Counsel for respondent also submitted that in view of Section 23 (2) of the Mamlatdars' Courts Act, the petitioner can very well

challenge the said order before the Collector or the authority to whom powers of Collectors are delegated. Thus, without going into the merits of the matter, the petition is dismissed, holding that the Mamlatdars' Court is having power to pass interim injunction, if those are essential and in exceptional circumstances. Petitioners are having alternative remedy and they are at liberty to file revision before the Collector. As such, the Writ Petition stands dismissed.

JUDGE

R.S. Sahare