



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

WRIT PETITION NO.4213 OF 2024

Bhagwan S/o. Ramchandra Wanjari

Vs.

Gram Panchayat Parsodi and Others

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. K.S. Motwani, Advocate for the Petitioner.

Mr. S.U. Bhuyar, Advocate for the Respondent.

CORAM: SIDDHESHWAR S. THOMBRE, J.

DATED : 15th OCTOBER, 2025

1. Heard Mr. K.S. Motwani, learned counsel for the petitioner and Mr. S.U. Bhuyar, learned counsel for the respondents.

2. The petitioner is aggrieved by the order dated 21.10.2023 in R.C.S. NO.192/2023 passed by the learned trial Court below Exh.5 whereby, the application seeking temporary injunction came to be rejected which was also confirmed by the Appellate Court.

3. Learned counsel for the petitioner submits that against the notice issued by the Gram Panchayat under Section 53 of the Maharashtra Village Panchayats Act, 1959 (for short "the Act"), he instituted a suit contending therein, that he is in settled possession of suit property for more than 30 years. He further submitted that, the Gram Panchayat without following the due procedure contemplated under Section 53 of the Act,

issued notice. The petitioner filed an application below Exh.5 for grant of temporary injunction contending therein, that as he is having the settled possession, through it is an encroachment, the notice under Section 53 of the Act was issued without obtaining due permission from the Collector. Learned counsel for the petitioner further submits that the learned Trial Court refused to grant temporary injunction on the ground that the petitioner failed to establish possession for more than 30 years and the same was confirmed by the Appellate Court.

4. Learned counsel for the respondent/State as well as learned counsel for the Gram Panchayat submits that admittedly there was an encroachment and the notices were issued by the Gram Panchayat. The record clearly reveals that some incorrect entries were recorded in record of rights and therefore, he submits that the Gram Panchayat has rightly issued a notice dated 28.07.2023 and Tahsildar also issued notice dated 14.08.2023. He further submits that the petitioner failed to prove he was in possession for more than 30 years and therefore, supported the orders passed by the learned Trial Court as well as the Appellate Court.

5. Section 53(2) of the Maharashtra Village Panchayat Act, 1959 empowers the Gram Panchayat to remove encroachments.

6. After going through the facts, it reveals that the trial Court refused to grant interim injunction solely on the ground that the petitioner failed to prove his possession for more than 30 years. But, the trial Court

has not considered the fact that he is in possession and therefore, he cannot be dislodged without following due process of law. As far as the suit is concerned, it is for the trial Court to decide the suit on its own merits. Therefore, till the suit is decided on merits, the petitioner's possession needs to be protected.

7. In view thereof, the present writ petition is **allowed**. Order below Exh.05 dated 21.10.2023 in RCS No.192/2023 passed by the learned Civil Judge Senior Division, Bhandara and the Order dated 06.07.2024 passed in Misc. Civil Appeal No.12/2024 by learned Additional District Judge-2, Bhandara are hereby set-aside. The application below Exh.05 is hereby allowed.

8. It is made clear that the petitioner is directed to restrain from making any further construction on the site and if he does so, Gram Panchayat is at liberty to demolish the same. No order as to costs.

(SIDDHESHWAR S. THOMBRE J.)

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