



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

WRIT PETITION NO. 3684 OF 2024

PANKAJ S/O GAJANAN SHITOOT
VS
MUNICIPAL COUNCIL SHEGAON, THR. CHIEF OFFICER, SHEGAON, DIST. BULDHANA

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
---	---------------------------

Shri A.P.Tathod, Advocate for petitioner.
Shri M.S.Sharma, Advocate for respondent.

CORAM: ROHIT W. JOSHI, J.

DATED : 09/06/2026

Heard.

2. The present petition takes exception to judgment and order dated 18/03/2024 passed by the learned Ad-hoc District Judge-1, Khamgaon in Misc. Civil Appeal No. 16/2020.

3. By the said judgment, the learned First Appellate Court has reversed order dated 09/11/2020 passed by the learned Civil Judge, Junior Division, Shegaon on the application at Exhibit-5 in Regular Civil Suit No. 09/2020. The learned trial Court had granted an order of temporary injunction in favour of the petitioner/original plaintiff, thereby restraining the respondent/original defendant from disturbing possession of the plaintiff over the suit property without following due process of law.

4. The mutation entry, on the basis of which, an order of temporary injunction was passed in favour of the plaintiff, was subsequently reversed by the order dated

04/01/2023 passed by the Deputy Superintendent of Land Records. It is informed that the petition challenging the said order reversing the mutation entry is pending before this Court. The learned First Appellate Court has observed that the map of the Co-operative Society showing the suit property no. 2 is an independent plot, is not filed on record by the plaintiff and that there are no documents on record to indicate the allotment of the suit property in favour of the plaintiff by the said Co-operative Society. With regard to the prescriptive title of the plaintiff over the suit property, it is observed that there is no documentary evidence on record to demonstrate that the construction was made after seeking prior permission. The learned First Appellate Court has recorded that the plaintiff has failed to *prima facie* prove his possession over the suit property in view of the order passed by the Deputy Superintendent of Land Records, reversing the mutation entry.

5. Perusal of order by the learned trial Court will indicate that the respondent/Municipal Council has issued a notice dated 06/02/2020 to the plaintiff for removal of encroachment/construction over the suit property. This by itself is sufficient to infer that *prima facie* the plaintiff is in possession of the suit property. The learned First Appellate Court has not taken into consideration the said document. Moreover, the pleadings in the written statement also indicate that the plaintiff is in possession of the suit property, although the contention is that the possession is not legal. In view of the aforesaid, the finding by the learned First Appellate Court that the plaintiff has failed to

establish his possession over the suit property, is *prima facie* unsustainable.

6. It is well settled that a person in settled possession of the suit property cannot be dispossessed without following due process of law. In view of the aforesaid, the order of temporary injunction granted by the learned trial Court will have to be maintained by quashing and setting aside the judgment and order passed by the learned First Appellate Court. It is, however, clarified that the respondent/Municipal Council will be at liberty to take appropriate steps for removal of encroachment/unauthorized construction in accordance with law. The writ petition is **allowed** in the following terms:-

(i) The judgment and order dated 18/03/2024 passed by the learned Ad-hoc District Judge-1, Khamgaon in Misc. Civil Appeal No. 16/2020 is quashed and set aside, and the order dated 09/11/2020 passed by the learned Civil Judge, Junior Division, Shegaon on the application at Exhibit-5 in Regular Civil Suit No. 09/2020 is maintained.

(ii) It will be open for the respondent/Municipal Council to take appropriate steps in accordance with law for removal of alleged encroachment/construction.

(ROHIT W. JOSHI, J.)