
(2007) 01 BOM CK 0073
In the Bombay High Court
Case No : Writ Petition No. 886 of 2006

Municipal Council

APPELLANT

Vs

Kundanlal Mohanlal Jaiswal and Others

RESPONDENT

Date of Decision : 31-01-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1
Maharashtra Land Revenue (Disposal of Government Land) Rules, 1971 — Rule 6(1), 7, 8
Maharashtra Land Revenue Code, 1966 — Section 31
Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965 — Section 181, 88(1), 88(2), 92
Maharashtra Municipalities (Transfer of Immovable Property) Rules, 1983 — Rule 26

Citation : (2007) 3 ALLMR 86 : (2007) 3 BomCR 384 : (2007) 3 MhLj 155

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : N.W. Sambre, for the Appellant; K.S. Narwade, for the Respondent

Judgement

B.P. Dharmadhikari, J.—Petitioner before this Court is Municipal Council, a local authority constituted under the provisions of Maharashtra Municipalities, Nagar Panchayats and Industrial Townships Act, 1965 (referred to as Municipal Act hereafter) for municipal administration of Pusad town in Yavatmal district. Respondents 1 to 3 before this Court are occupiers of temporary structures which petitioner wanted to remove as encroachment for undertaking the earmarked development work of road widening and erection of a shopping centre. Accordingly on 5th Oct. 2005 it served notices upon them u/s 181 of Municipal Act and called upon them to remove encroachment. Respondents challenged said notices by filing Regular Civil Suit 150/2005 and in said Civil Suit they sought temporary injunction. Second Joint Civil Judge Junior Division at Pusad rejected that prayer on 18-10-2005 and this rejection was challenged by them in Misc. Civil Appeal 26/2005 under Order 43, Rule 1 of Civil Procedure Code. Additional District Judge, Pusad by judgment dated 29-10-2005 allowed that Appeal and directed expeditious disposal of Civil Suit while protecting possession of

respondents. Municipal Council has questioned the judgment in present Writ Petition. Respondents had filed caveat and they filed their submissions on 12-4-2006. On 14-12-2006 this court while issuing notice ordered that petition shall be disposed of finally at admission stage itself. Accordingly I have heard Advocate N.W. Sambre for petitioner and Advocate K.S. Narwade for respondents finally by making rule returnable forthwith.

2. Advocate Sambre contends that Appellate Court has given temporary injunction only because it has found respondents in possession. He argues that possession of respondents is not legal and also not in accordance with provisions of Municipal Act. He further states that land has admittedly vested in petitioner and is required by for starting the work of road widening and also for building of shopping centre. He argues that these lands are reserved for this purpose in town planning and work to be undertaken is in public interest. Respondents have no right to continue in possession of said land for having their business. He points out that lands are not allotted to respondents in accordance with requirements of Municipal Act or Maharashtra Land Revenue Code. He invites attention to various judgments to state that the Appellate Court has not correctly appreciated the controversy and has given temporary injunction without noticing that there is no legal right in respondents to continue in possession. Mere long possession or payment of property tax, water tax or some rent to Municipal Council or having certificate is in relation to establishment does not establish any prima facie case in their favour. He also invites attention to provisions of Municipal Act for said purpose.

Advocate Narwade on behalf of respondents states that respondents are in possession since 1971 and shop or business on sites in dispute is their only source of livelihood. He states that Municipal Council is recovering rent from them regularly and they are also paying property tax, electricity charges, water tax etc. He states that they are also having valid licence under Bombay Shops and Establishments Act, 1948. He invites attention to resolution of Municipal Council dated 7-12-1987 to make provision of alternate site for them before asking them to vacate. He also invites attention to similar condition put in by Collector, Yavatmal while allotting in these lands to Municipal Council vide order dated 27-5-1989. He also relies upon judgments considered by Appellate Court for supporting said order. According to him Section 181 of Municipal Act has no application in the facts of present case. Lastly he points out that suit is already expedited by Appellate Court and hence this Court should not interfere in writ jurisdiction. He submits that rights of parties should be allowed to be worked out by Civil Court and at the most said suit should be made time bound.

3. Appellate Court has relied upon *Mansharam Mirchumal Sangtani and others Vs. Dhule Nagar Palika (Municipal Council)*, . Writ petitioners in said case were possessing tenements belonging to the Municipal Council, Dhule for carrying on petty business, for more than 20 years. The petitioners also contended that they had licence from the Municipal Council, Dhule under the Shops and

Establishments Act for carrying on their business in the tenements in question and that they were paying taxes to the Municipal Council from time to time. On 1st March, 1987, some officers of the Municipal Council, Dhule along with a number of workers having come to the premises of the petitioners for demolition of the same on the ground that they were encroachers on the public road, the petitioners instituted suits in the Court of Joint Civil Judge, Junior Division, Dhule and also sought temporary injunction. The trial Court was satisfied that it was a fit case and by order dated 7th March, 1987 temporary injunction was issued to the petitioners as prayed for by them. On appeals of Dhule Municipal Council the 3rd Additional District Judge, Dhule by a common judgment and order, dated 27th August 1990 set aside the order of the trial Court of 7th March 1987, granting injunction in favour of the petitioners. The learned Appellate Court did find that prima facie case stood in favour of the Plaintiffs. It, however, observed that irreparable harm and inconveniences may not be sufficient criteria for granting an interim injunction. Appellate Court held that while considering the point of balance of convenience, it was necessary to see the surrounding prevailing circumstances and welfare of the general public at large; that it was indispensable to protect the rights of community rather than the individual rights. It is in this background that following observations are made by this Court:

7. I have carefully considered the rival submissions. I fully agree with the counsel for the respondent that the object of demolition cannot be totally disregarded in considering the prayer for temporary injunction. But, I am also conscious of the fact that where valuable rights of the citizens are involved and shops in their occupation for long 20 years are sought to be demolished, the courts are entitled and in fact required to look into the balance of convenience of the shop-owners. Prima facie merit of the case and balance of convenience of the parties cannot be given a good-bye on the ground that "what is sought to be done is for the happiness of many". The principles governing grant of temporary injunction are too well settled to need reiteration. Ordinarily an injunction should be issued if the court is satisfied that (a) a prima facie case exists (b) the balance of convenience is in favour of granting injunction and (c) if injunction is not granted irreparable injury would be caused to the party praying for injunction which cannot be compensated in terms of money. An interlocutory injunction should normally be granted to restrain an apprehended or threatened injury where the injury is certain and imminent or where the mischief likely to be done is of an overwhelming nature viz. demolition and destruction of property.

8. In the instant case I am, therefore, of the clear opinion that the approach of the 3rd Additional District Judge, Dhule in the matter was not correct. Having accepted the prima facie contentions of the petitioners regarding long standing possession of the petitioners, issue of licence to them under the Shops and Establishments Act for all these years, granting electric connection etc. and also having recorded a categorical finding that there was a prima facie case in favour of the petitioners for grant of interim injunction, the Additional District Judge was not justified in setting aside the order of the trial Court granting temporary

injunction on the basis of the philosophy propounded by him in his order.

Govindbhai R. Chauhan v. Gokulchand J. Agarwal 1996 (2) Mh.L.J. 1062 appears to be the judgment in dispute between private parties. It has been held there that a trespasser in settled possession can seek temporary injunction to protect his possession till he is dispossessed in accordance with law. However it has also been clarified there that respondent No. 1 Shri Agarwal was not precluded from prosecuting the remedy available to him for dispossessing the trespasser in accordance with law. It is apparent that this ruling cannot have application when local authority is exercising its statutory power to remove encroachers.

4. In Vinayak S. Bapat v. Superintendent of Police, Chandrapur and Ors. 2006 (2) Mh.L.J 97 : AIR 2005 Bom. 328 Division Bench [J. Shri J.N. Patel and myself] of this Court has considered this issue as under:

26) One of the excuses pleaded by respondent No 3 Municipal Council is pendency of issue in subordinate Courts. The parties to these court proceedings are not before us. Hence it is not possible for us to make any effective or binding comment on any of these proceedings. However the law on the point in relation to encroachments or hawkers is considered above and were also made reference to judgment of Hon"ble Apex Court in case of Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan and others, . In paragraph 27 below we have also extracted the important observations in this respect. It is apparent that plaintiff or applicant who wants his encroachments on public Road to be protected by any interim order has to satisfy the court about existence of any legal right in his favour to maintain such encroachment during pendency of suit and for that purpose, he has to point out some title in him authorising him to occupy the portion of public Road or footpath etc., In the absence of any such legal right, the encroacher cannot be permitted to obstruct the free flow of traffic or cause inconvenience to public at large. Mere long possession or user cannot be an answer to tilt the balance in his favour when in other pan of balance, the Court has to way interest of public at large. Even the threat of losing source of livelihood cannot be, by itself a circumstance in favour of such applicant. He encroached upon public road or footpath knowing fully well that nobody can clothe him with authority to occupy and use it for his private gain. He cannot feign ignorance of provisions of Law and try to raise equity in his favour. Court of Law cannot permit such wrongdoer to continue to injure public at large during pendency of suit. Hence, his plaint itself must contain sufficient material and facts to satisfy the court that the convenience and interest of public at large must suffer because of legal right in his favour, which will be a very rare case.

27. Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan and others, is the judgment which lays down law on the point of removal of encroacher from public lands/road. Following observations therein are important:

9. The Constitution does not put an absolute embargo on the deprivation of life or personal liberty but such a deprivation must be according to the procedure, in

the given circumstances, fair and reasonable. To become fair, just and reasonable, it would not be enough that the procedure prescribed in law is a formality. It must be pragmatic and realistic one to meet the given fact situation. No inflexible rule of hearing and due application of mind can be insisted upon in every or all cases. Each case depends upon its own backdrop. The removal of encroachment needs urgent action. But in this behalf what requires to be done by the competent authority is to ensure constant vigil on encroachment of the public places. Sooner the encroachment is removed when sighted, better would be the facilities or convenience for passing or re-passing of the pedestrians on the pavements or footpaths facilitating free flow of regulated traffic on the road or use of public places. On the contrary, the longer the delay, the greater will be the danger of permitting the encroachers claiming semblance of right to obstruct removal of the encroachment. If the encroachment is of a recent origin the need to follow the procedure of principle of natural justice could be obviated in that no one has a right to encroach upon the public property and claim the procedure of opportunity of hearing which would be a tedious and time-consuming process leading to putting a premium for high-handed and unauthorised acts of encroachment and unlawful squatting. On the other hand, if the Corporation allows settlement of encroachers for a long time for reasons best known to them, and reasons are not far to seek, then necessarily a modicum of reasonable notice for removal, say two weeks or 10 days, and personal service on the encroachers or substituted service by fixing notice on the property is necessary. If the encroachment is not removed within the specified time, the competent authority would be at liberty to have it removed. That would meet the fairness of procedure and principle of giving opportunity to remove the encroachment voluntarily by the encroachers. On their resistance, necessarily appropriate and reasonable force can be used to have the encroachment removed. Thus considered, we hold that the action taken by the appellant-Corporation is not violative of the principle of natural justice.

It was stated in the affidavit before Hon''ble Apex Court by Municipal Corporation that they are giving 21 days notice before taking action for ejectment of the encroachers. That procedure, was held to be fair procedure and, therefore, the right to hearing before taking action for ejectment was found to be not necessary in the said facts and situation. Requirement of following the procedure for eviction of encroacher was held to be necessary only when the Municipal Council did not act immediately and allowed such encroacher to continue in wrongful occupation for quite some time. In the facts of present case respondent No. 3 Municipal Council has stated that it is acting immediately and action for removal of encroachment is being taken within a day or two. If any person has got any grievance against any such encroachment on public land or road, the Authority proposed by us below can examine the said issue in the light of guidelines laid down by Hon''ble Apex Court above.

This judgment of Division Bench therefore clearly goes to show paramount importance given to public convenience and public at large in such matters.

Court while extending any protection to such person who is alleged to have committed encroachment, has to record of finding of legal right in his favour. Mere plea that he is in possession and therefore his encroachment needs to be protected can be of no assistance because on the basis of such plea he cannot ultimately succeed in his Suit. If final relief itself cannot be granted on such plea, it is apparent that no interim relief also can be sustained by it. Thus apart from long possession, such person has to establish some legal right in his favour to enable him to claim temporary injunction during pendency of suit.

5. Observations in following judgments mentioned below also throw useful light. In AIR 1989 SC 1988, *Sodan Singh v. New Delhi Municipal Committee* Hon''ble Apex Court observed:

13. Mr. Singhvi is correct in pointing out that the passages of the American and English laws, as relied upon on behalf of the petitioners, do not establish their right to carry on trading business on public streets, but for that reason their claim cannot be ejected either. The question requires to be examined further. The observations in the judgment of Venkatarama Aiyar, J. quoted above prima facie support the petitioners. They received express approval of this Court in *Saghir Ahmad Vs. The State of U.P. and Others*, , but there is an important distinction between those cases and the present matter which cannot be ignored. In both the above cases the petitioners were claiming the right to ply transport vehicles for hire on public streets; in other words, they wanted to use the roads for transport, for which the roads were primarily laid out and while so doing attempted to earn money. In the present cases before us the petitioners are desirous of conducting their trade business by sale of goods on the roads from stationary points; they do not want to make use of the roads for movement of persons or goods. The question is whether this makes a material difference.

14. The primary object of building roads is undoubtedly to facilitate people to travel from one point to another. Quoting several--- highway as such. These statements certainly do not mean that a traveller has to be in perpetual motion when he is in a public street. It may be essential for him to stop sometime for various reasons he may have to alight from a vehicle or pick up a friend, collect certain articles or unload goods or has to take some rest after a long and strenuous journey. What is required of him is that he should not create an unreasonable obstruction which may inconvenience other persons having similar right to pass; he should not make excessive use of the road to the prejudice of the others. Liberty of an individual comes to an end where the liberty of another commences. Subject to this, a member of the public is entitled to legitimate user of the road other than actually passing or re-passing through it.

15. It has been sometimes argued that since a person is entitled to the user of every part of a public street, he cannot be deprived of the use of any portion thereof by putting up of any obstruction. This proposition in its extreme form cannot be accepted without subjecting it to several restrictions.----- . If hawkers were to be conceded the right claimed by them, they could hold the society to

ransom by squatting on the busy thoroughfares, thereby paralysing all civic life. This is one side of the picture. On the other hand, the right if properly regulated according to the exigency of the circumstances, the small traders on the side walks can considerably add to the comfort and convenience of general public, by making available ordinary articles of every day use for a comparatively lesser price.---- Proper regulation is, however, a necessary condition as otherwise the very object of laying out roads - to facilitate traffic - may be defeated.--- The proposition that all public streets and roads in India vest in the State but that the State holds them as trustee on behalf of the public, and the members of the public are entitled as beneficiaries to use them as a matter of right, and that this right is limited only by the similar rights possessed by every other citizen to use the pathways, and further that the State as trustee is entitled to impose all necessary limitations on the character and extent of the user should be treated as of universal application.

17. The provisions of the Municipal Acts should be construed in the light of the above proposition. In case of ambiguity, they should receive a beneficial interpretation, which may enable the municipalities to liberally exercise their authority both, in granting permission to individuals for making other uses of the pavements, and, for removal of any encroachment which may, in their opinion, be constituting

undesirable obstruction to the travelling public.---

In Mohammed Suleman and another Vs. Special Officer, Municipal Corporation of Hyderabad, A.P., learned Single Judge held:

10. Following the ratio of the Supreme Court's decision in Sodan Singh case (supra), I hold that the petitioners have no legal right to insist that they should be permitted to retain their structures on a busy road margin when the road itself is sought to be widened nor can it be said that till an alternative accommodation is shown by the Municipal Corporation, the petitioners have a right to continue their business even at the cost of holding up the road widening programme. No doubt, a scheme has been directed to be framed in Sodan Singh's case (supra) to regulate the street trading and to rehabilitate some of them in the zone specially selected for squatting/hawking and while considering the scheme prepared by a Committee, the Supreme Court pointed out the need to adopt a compassionate approach so as to ensure that genuine squatters/hawkers are not denied their daily bread on the altar of technicalities [vide para-2 of Saudan Singh case (supra)]. But nowhere it is spelt out that in all cases of encroachment of public roads and streets by poor for the purpose of making their livelihood , a proposal for rehabilitation in an alternative place is a condition precedent for taking any step to remove the encroachment. A large section of pavement vendors in the city of Delhi called for a special approach especially having regard to the fact that the permission to squat was being granted to the traders on daily basis or for short periods by the Corporation itself. The Corporation itself conducted a survey and prepared a scheme to

determine the categories of persons to be considered for grant of permission to squat subject to availability of space. In framing the scheme, the hawkers/squatters in busy areas having severe traffic congestion were allotted space for their business in some less busy areas. The case of two or three persons running mechanical workshops by putting up temporary structures on the road margin are not comparable to cases of large section of squatters/hawkers considered by the Supreme Court in the aforementioned case, especially when the road widening work had to be urgently undertaken in public interest. It is not even the case of the petitioners that they were prepared to go to any place or that they approached the Municipal Corporation for a grant of suitable site at a non-objectionable place.

6. Petitioner before this Court is an artificial person created under the provisions of Municipal Act. All its actions are therefore controlled by provisions of enactment giving birth to it and must conform to it in order to be legally sustainable or actionable. Respondents therefore have to establish that they are placed in possession by Municipal Council in accordance with provisions of Municipal Act. Provisions of Section 92 thereof read as under:

92. Provisions regarding transfer of municipal property. -- (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 the resolution of the Council passed at a meeting by majority of not less than two-thirds of the total number of Councillors 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 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 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.

Provisions of Section 88 (2) may also be relevant here. This section or Section 92 occurs in chapter VII of Municipal Act and said chapter deals with municipal property, funds, contracts and liabilities. Section 88 (2) with relevant portion of Sub-section (1) is as under:

88. Power to acquire and hold properly.--

(D--(a) to (d)---

(f) all lands, buildings or other property transferred to the Council by the

Central Government or the State Government or acquired by gift, purchase or otherwise for local public purposes; and

(g)---

(2) the lands and buildings belonging to Government and transferred to a Council under Clause (f) of Sub-section (1) shall not, unless otherwise expressly provided in the instrument order of transfer, belong by right of ownership to the Council, but shall vest in it subject to the terms and conditions of transfer.

7. In this background, it will now be appropriate to find out what is the case pleaded by respondents/plaintiffs. Suit is filed for grant of the prohibitory injunction to protect their possession by restraining petitioner from interfering with it in any manner and for declaration that notice dated 5-10-2005 issued by the petitioner is wrong and illegal. Respondents state description of respective plots in their possession and further state that it is in their possession since 1971 on temporary lease. They also point out that they are doing business on this plots and are paying rent regularly in the office of petitioner and have receipts therefor. They further state that they are paying tax also and respondent No 1 has stated that his country liquor shop is duly licensed under provisions of Bombay Prohibition Act and also under Shops and Establishment Act. All state that they have electric connection and water connection, and are paying charges therefore regularly. They state that their possession is legal and they are small traders with no other place to run their business. They also mention that land is recorded as Government land with nazul and petitioner has no rights over it. Thereafter they point out service of notices dated 5-10-2005 upon them and further state that when they visited office of petitioner to deposit rent, petitioner refused to accept it. They have thereafter pointed out their long possession and certain judgments to support their contention that said possession is legal and needs to be protected. It is therefore clear that they have not pointed out any written contract with municipal Council enabling them to occupy this plot or any resolution of municipal Council permitting them to occupy these plots. They have not pointed out any provision of Municipal Act in support of their stand. It is therefore clear that above-mentioned provisions of Section 92 have not been shown as fulfilled by them to claim any legal right to continue to occupy suit plots. Mere act of depositing monthly certain amount as rent cannot clothe respondents with status as lessee or tenant. Even if contention of respondents about temporary lease is taken up for scrutiny, it is apparent that it is Council who can grant such lease for period not exceeding three years and there has to be resolution of Council for that purpose. Section 92 expressly states that total period of such temporary lease with its renewals cannot exceed nine years. Respondents have not pleaded any compliance with these requirements of law. No resolution of petitioner Council fixing any amount as monthly rent has been pleaded.

8. Stand of respondents is that property belongs to Government. Roving attitude is apparent from fact that they claim temporary lease from municipal Council and plead payment of monthly rent to it. 1st document on which respondents have placed reliance for this purpose is the order dated 27th May 1989 passed by

Collector Yavatmal by which sanction has been accorded to grant of land admeasuring 1093 sq. m. out of plot No. 2396, Sheet No. 66 to petitioner Municipal Council on payment of occupancy prices of Rs. 38255 and on yearly revenue of Rs. 393.50 in exercise of powers u/s 31 of Maharashtra Land Revenue Court, 1966 read with Rule 6(1) and Rule 8 of Maharashtra Land Revenue (Disposal of Government Land) Rules, 1971. Clause (e) states that there are 26 unauthorised hut owners and municipal Council has to settle these hutment dwellers before starting construction of slaughterhouse and beef market. Clause (f) states that only after completion of resettlement of hutment dwellers said construction should be made and Clause (g) further states that construction should be made as per development and control rules and provisions of Integrated Urban Development Programme of the Central Government. Its preamble also mentions that said land is reserved in Draft Development Plan for beef market and slaughterhouse. It is therefore apparent that this document mentions dwellers i.e. persons using huts for residence. It nowhere contemplates resettlement of respondents who are carrying out commercial activities in their respective structures. Further these respondents have not stated that they need to be resettled and it is further apparent that there is no grievance being made by 26 unauthorised hut owners reflected in the Government order. Other document is the resolution number 448 of meeting dated 7-12-1987 of Standing Committee of petitioner. The resolution is obviously prior to above-mentioned order of Collector. It only mentions desire of Municipal Council to acquire land in question and states that said land is reserved for shopping centre and road widening. It further mentions that it is actually being used by some shopkeepers and some of it is being used for residence. It appears that before granting this land to Municipal Council, Sub Divisional Officer inquired from it as to whether Municipal Council was making any alternate arrangement for occupiers. The resolution mentions that till the shopkeepers having their shops on reserved plot are given alternate shops or residents are provided alternate accommodation, they would not be required to vacate. It further states that in construction to be undertaken under Integrated City Development Project, as per Section 92 of Municipal Act and Maharashtra Municipalities (Transfer Of Immovable Property) Rules, 1983 under it, these persons should be accommodated in shops to be constructed or residential accommodation to be provided on "no profit no loss" basis. 1983 Rules mentioned above do not contemplate any such allotment and Municipal Council has been permitted to dispose of its immovable property through any open process in which all aspirants can participate. Provisions of part III, Rule 7 and 8 does not permit any such allotment even to existing occupiers. It is therefore clear that no premium can be placed upon any encroacher by giving him any preferential treatment in the matter. Conditions mentioned by Collector in his order are after resolution of Municipal Council and are only restricted to 26 hutment dwellers. Rule 26 occurring in part VII of these 1983 Rules permit Government to relax these rules by recording reasons in writing in respect of a case which in its opinion is of special nature. Respondents have not come up with any such case and for reasons obvious, they cannot come

up with any such plea. Reference to these documents by present respondents is therefore again misconceived and only shows their intention to remain in possession and to exploit said land commercially as long as possible. It is to be noticed that cost of construction is going up everyday and respondents for their personal benefit have definitely put more burden on public revenue. It is apparent that their individual grievance cannot be compared with public injury and in absence of even a prima 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.

9. It is therefore obvious that the order dated 29-10-2005 passed by the learned Additional District Judge, Pusa in Misc Civil Appeal 26/2005 is unsustainable and needs to be quashed and set aside. Accordingly said order is quashed and Misc Civil Appeal 26/2005 is hereby dismissed. Writ petition is accordingly allowed and in the facts, petitioner Municipal Council is awarded cost of Rs. 5000/- only recoverable from respondents by it. Rule made absolute accordingly.

10. At this stage Shri Narwade, Advocate for the respondents states that the respondents wish to challenge the judgment before appropriate forum and hence the same should be stayed for a period of six weeks. He states that he has informed the office of Shri Sambre, Advocate who appears for the petitioner and he further mentions that registered clerk of Shri Sambre, Advocate is present in the Court Hall. In the circumstances, the operation and effect of today's

judgment is suspended for a period of six weeks to enable the respondents to take further appropriate steps in the matter. The said suspension will end automatically after expiry of said period.³