

**HIGH COURT OF MADHYA PRADESH**  
**BENCH AT INDORE**  
**(SB: HON. SHRI JUSTICE PRAKASH SHRIVASTAVA)**

**W.P. No.2234/2016**

Bherulal S/o Ramaji Bhil  
and others ..... Petitioners

Vs.

State of Madhya Pradesh ..... Respondent

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Shri P.R. Bhatnagar learned counsel for petitioners.

Shri Romesh Dave learned counsel for respondent.

Shri N.S. Bhati learned counsel for the proposed intervenor.  
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**Whether approved for reporting :**

**ORDER**

**(Passed on 2/6/2016)**

1/ This writ petition under Article 227 of the Constitution of India is at the instance of plaintiffs in the suit challenging the order of lower appellate court dated 16/3/2016 whereby the appeal filed by respondents has been allowed and order of temporary injunction granted by trial court by order dated 29/2/2016 has been set aside.

2/ In brief, the petitioners have filed the suit for permanent injunction pleading that land in survey No. 545/1 is the government land in which the petitioners are in possession for several years and are cultivating the same. The land has been allotted for industrial purpose to the Industries Department vide order dated 15/2/2008 and possession certificate has also been

issued whereas the petitioners are in possession. The government had tried to dispossess the petitioners in the year 2010 and in the year 2016 an attempt was made to raise construction, hence the present suit was filed.

3/ The suit was opposed by the respondents taking the plea that petitioners had unauthorisedly cultivated the suit land and no notice under Section 80 CPC was given and the Industry Department was not made party and petitioners are not in possession of the suit land since 2007. The land is set out for establishing the Horticulture Hub which will give employment to 3000 people. Hence the application was opposed.

4/ Trial court had granted temporary injunction on the ground that petitioners are in possession of the suit land and that they will suffer irreparable injury if dispossessed pending the suit. The lower appellate court has set aside the order of trial court on the ground that petitioners are encroachers and a big project is proposed at the site for the benefit of larger public.

5/ Having heard the learned counsel for parties and on perusal of the record it is noticed that petitioners are admittedly encroachers on the suit land. The suit land is undisputedly the government land. The lower appellate court has taken note of the order of High court dated 7/4/2010 by which the Collector and Superintendent of Police Ratlam were directed to take action against the concerned person. The lower appellate court has also noted that some of petitioners were given notice on 19/6/09 for removing the encroachment and fine was also imposed. In these circumstances, the lower appellate court has found that the petitioners had no prima facie case in their favour. Their possession is found to be that of an encroacher. The lower

appellate court has also taken note of the judgment wherein it has been held that settled possession is required to be protected till the person concerned is dispossessed in accordance with law but taking note of the fact that the relief claimed in the suit is different the lower appellate court has found that petitioners are not entitled to the benefit of the said judgment. It has also been noted that on the suit land a big project is proposed which will benefit a larger public. The lower appellate court in the circumstances of the case has found that petitioners have no prima facie case and balance of convenience and that no irreparable injury will be caused if the injunction is refused.

6/ Counsel for petitioner has placed reliance upon judgments of the Supreme court in the matter of **Krishna Ram Mahale (dead) by His LRs Vs. Mrs. Shobha Venkat Rao reported in AIR 1989 SC 2097** and in the matter of **Rame Gowda (D) by LRs Vs. M. Varadappa Naidu (D) by LRS reported in AIR 2004 SC 4609** but both judgments have already been considered by the lower appellate court.

7/ The order passed by the lower appellate court is a well reasoned order which does not suffer from any patently illegality.

8/ Even otherwise, the scope of interference in exercise of jurisdiction under Article 227 of Constitution of India is limited. The Supreme court in the matter of **Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil**, reported in **(2010) 8 SCC 329** has held that High court in exercise of its power of superintendence cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. The High

court can exercise this power when there has been a patent perversity in the orders of tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

9/ Keeping in view the aforesaid, I find no ground to interfere in the impugned order of the lower appellate court. The writ petition is accordingly dismissed.

**(PRAKASH SHRIVASTAVA)**  
**Judge**

BDJ