



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 16288 OF 2025

1. Ganesh D Tapkir  
Age 42, Occ.- Business & Agriculturist  
R/at Gurudatta Nagar,  
Pan Card Club Road,  
Baner, Pune 411 045.

2. Santosh Krushna Patil,  
Age 50, Occ. Business  
R/at. 20, Surashree,  
Plot No. RH – 56,  
G Block, M.I.D.C.  
Chinchwad, Pune – 411 019.

...Petitioners

**Versus**

1. Baner Yethil, Samasta Gramastha Mandal  
Baner, Through it's Representatives

2. Rahul Krushnaji Parkhe  
Age: Years, Occ. Business  
R/at Krushna Kunj, S. No. 204/9,  
Parkhe Mala, Baner,  
Pune 411 045.

3. Santosh Mukundrao Tapkir,  
Age: Years, Occ. Business  
R/at S.No. 83/2, Dattakrupa  
Niwas, Baner, Pune 411 045.

4. Shahaji Sahebrao Murkute  
Age: Years, Occ. Business  
R/at Behind Hanuman Mandir,  
Baner Gaothan, Baner,  
Pune 411 045.

ARUN  
RAMCHANDRA  
SANKPAL

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ARUN RAMCHANDRA  
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5. Pravin Vilas Shinde,  
Age: Years, Occ. Business  
R/at Chakankar Mala,  
Baner, Pune 411 045.

6. Ashish Arjun Tamhane  
Age: Years, Occ. Business  
R/at Harinivas,  
Near Bhairavnath Paduka Mandir,  
Baner, Pune 411 045.

7. Nitin Bhiku Shinde,  
R/at Shinde Parkhe Mala,  
S. No. 210, Baner,  
Pune 411 045.

8. Mangesh Pundlik Murkute,  
Age: Years, Occ. Business  
R/at Near Ram Mandir,  
Baner Gaothan, Baner,  
Pune 411 045.

9. Akshay Bhanudas Tapkir  
R/at Tukaram Gadh Bunglow,  
S. No. 83, Baner,  
Pune 411 045.

10. Manikrao Kashinath Gandhile  
R/at Near Shivaji Putala,  
Baner, Pune 411 045.

11. Makrand Janardan Kalamkar  
Age: Years, Occ. Business  
R/at Yash Park, S. No. 48,  
Chakankar Mala,  
Baner, Pune 411 045.

...Respondents  
(Orig Plaintiff)

12. Commissioner,  
Pune Municipality,  
P.M.C. Bhavan,  
Shivajinagar,  
Pune – 411 005.

Respondent  
(Orig Def No.3)

Mr. Anil Anturkar, Senior Advocate, Atharva Date, Kashish Chellani,  
Minal Chandnani, i/b Hemanth Ghadigaonkar, for the  
Petitioners.

Mr. Avinash Bhuskute, for Respondent Nos. 1 to 10.

Adv R.S. Khadapkar, for Respondent No.11.

**CORAM : N. J. JAMADAR, J.**

**RESERVED ON : 26<sup>th</sup> MARCH 2026**

**PRONOUNCED ON : 1<sup>st</sup> APRIL 2026**

**JUDGMENT:**

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. By this Petition under Article 227 of the Constitution of India, the Petitioners-original Defendant Nos. 1 and 2, take exception to a judgment and order dated 3<sup>rd</sup> April 2025 passed by the learned District Judge, Pune in MCA No. 101 of 2024, whereby the said Appeal preferred by the Petitioners against an order dated 22<sup>nd</sup> April 2024 passed by the learned Civil Judge, P.M.C. Court, Pune, thereby granting injunction, came to be dismissed by affirming the order passed by the trial Court.

3. Shorn of unnecessary details the background facts can be stated as under:

3.1 A representative suit came to be instituted by an organization of villagers of Baner, styled, "*Baner Yethil Samastha Gramastha Mandal*" through Respondent Nos. 1 to 10, seeking a declaration that the

villagers of Baner have a customary right to celebrate *Bagad festival* on the occasion of “Hanuman Jayanti”, and to restrain the Petitioners-Defendant Nos. 1 and 2 from causing obstruction in any manner whatsoever in the celebration of the said festival which has been celebrated in accordance with the traditions since ancient times.

**3.2** The substance of the claim of the Plaintiff was that “*Shree Bhairavnath*” is the village deity of Baner; which has been included in the Pune Municipal Corporation in the year 1997. *Shree Bhairavnath* Temple is located in “Gaothan” of village Baner. Another temple of *Bhairavnath* known as “*Shree Bhairavnath Paduka Mandir*” is situated at Survey No. 288. Since time immemorial every year, on the occasion of Hanuman Jayanti, a festival styled, “*Bagad*” is celebrated on the land admeasuring 10 R situated in front of “*Shree Bhairavnath Paduka Mandir*” temple. The said 10 R land is the suit property.

**3.3** The Plaintiff asserts that for the said *Bagad festival* 2000-3000 devotees assemble in the suit property. A ritual of moving the *Bagad* which is like a chariot mounted on a bullock-cart is performed for over an hour. The said festival has been celebrated since 400-500 years. The villagers had erected a fencing to earmark the suit property, out of the funds raised from the villagers.

**3.4** Murkute family was the holder of the larger land of which the temple and the suit property form part. Murkute family had kept the

suit property open to facilitate the celebration of annual *Bagad festival*. In the year 1967 Bhau Murkute and others sold the land bearing Survey No. 288 to Ratnakar Bharvirkar. The description of the property conveyed thereunder clearly indicates that the suit property was earmarked for the *Bagad festival*.

**3.5** As Defendant Nos. 1 and 2 attempted to remove the fencing around the suit property, the villagers resisted the said effort. In the enquiries that followed, it transpired that under a registered Sale Deed dated 24<sup>th</sup> August 1987, Bharvirkar had sold the larger land to M/s Mankanis Builders Developers Private Limited (“M/s Mankanis Builders”). Subsequently, under a Sale Deed dated 24<sup>th</sup> February 2022, M/s Mankanis Builders transferred suit property in favour of Defendant Nos. 1 and 2.

**3.6** The Plaintiffs claim the boundaries of the property, sold under the said Sale Deeds of 1987 and 2022, were incorrectly shown with a malafide intent. M/s Mankanis Developers had never asserted the possessory rights over the suit property, nor ever objected the celebration of *Bagad festival*.

**3.7** Defendant No.1 whose father was a Municipal Councilor of Baner was fully aware of the customary right of the villagers to celebrate annual *Bagad festival*. Yet, the Defendants Nos. 1 and 2 with intent to

obtain a windfall gain acquired the suit property for grossly inadequate consideration.

**3.8** As Defendant Nos. 1 and 2, by allegedly taking undue advantage of their position and proximity to the authorities, attempted to change the zone of the property in the Development Plan and carry out development over the suit property with intent to defeat the customary right of the villagers to celebrate annual *Bagad festival*, the suit came to be instituted for declaratory and consequential injunctive reliefs, even against the Commissioner of Pune Municipal Corporation-Defendant No. 3, in relation to the sanction of building plan and grant of TDR etc.

**3.9** In the said Suit, the Plaintiffs filed an Application for temporary injunction to restrain Defendant Nos. 1 and 2 from causing obstruction in the celebration of the annual *Bagad festival*, then scheduled to be held on 23<sup>rd</sup> April 2024.

**3.10** During the pendency of the said Application, another Application (Exhibit “30”), was filed by the Plaintiff with the assertions that the Defendant Nos. 1 and 2 had started excavation work in, and erected iron structures over, the suit property so as to put hindrances in the celebration of *Bagad festival*. The Plaintiffs thus prayed that an interim mandatory injunction against the Defendant Nos. 1 and 2 to remove the said structures and restore the suit property status-quo ante, on or before 22<sup>nd</sup> April 2024.

**3.11** Defendant Nos. 1 and 2 resisted the applications. The resistance was principally premised on the objections to the maintainability of the suit, and non-compliance with the procedural requirements. The averments in the Plaint and the Applications were sought to be denied. On the merits of the matter, the Plaintiffs were sought to be put to strict proof of the averments in the Plaint and the Applications. It was contended that the alleged *Bagad festival* celebration has no concern with the suit property.

**3.12** By a common order, the learned Civil Judge was persuaded to allow the Applications (Exhibits “5” and “30”) holding *inter alia* that Defendant Nos. 1 and 2 had not denied the case of the Plaintiffs that the *Bagad festival* was celebrated since time immemorial. The question whether the *Bagad festival* was celebrated on the suit property was a mater for adjudication at the trial, after the parties adduced evidence. *Prima faice* it appeared that annual *Bagad festival* was celebrated at the suit property. Finding the balance of convenience and the element of irreparable loss in favour of the Plaintiffs, and noting that Defendant Nos. 1 and 2 had started excavation work and erected iron structures over the suit property, the learned Civil Judge restrained Defendant Nos. 1 and 2 from causing obstruction in the celebration of the *Bagad festival* and also directed the Defendants to restore the position of the suit property status-quo ante.

**3.13** Being aggrieved, the Petitioners preferred an Appeal before the District Court, Pune.

**3.14** By the impugned judgment and order, the learned District Judge dismissed the Appeal. In the view of the learned District Judge, the learned Civil Judge has correctly exercised the discretion to grant the injunctive reliefs and there was no reason to interfere with the discretionary order passed by the trial Court. The learned District Judge, *inter alia*, recorded that, the villagers of Baner were celebrating the *Bagad festival* at the suit property since long, continuously and without any interruption.

**3.15** Being further aggrieved, Defendant Nos. 1 and 2 have invoked the writ jurisdiction.

**4.** I have heard Mr. Anil Anturkar, the learned Senior Advocate, for the Petitioners, Mr. Avinash Bhuskute, the learned Counsel for Respondent Nos. 1 to 10 - Plaintiffs, and Mr. R.S. Khadapkar, the learned Counsel for Respondent No.11-Defendant No.3. The learned Counsel for the parties took the Court through the pleadings and the material on record.

**5.** Mr. Anturkar, the learned Senior Advocate for the Petitioners, submitted that the question as to whether the constitutional right to property is being invaded without even making out a *prima facie* case of customary easement, arises for consideration in this Appeal. It was

submitted that if a majority of villagers join hands to enforce a non-existent, yet, supposed customary easement, by the sheer force of numbers, then the constitutionally protected right to property would be severely jeopardised. The Courts below have not approached the controversy at hand from this perspective, urged Mr. Anturkar.

6. Mr. Anturkar submitted that, first and foremost, there are no pleadings to sustain a case of customary easement. Neither the time of commencement is pleaded, nor the incidents on the strength of which an inference of customary easement could be drawn have been spelled out. The existence of the custom, as such, must have been adequately pleaded. Mr. Anturkar would urge, where a case of customary easement is sought to be made out, pleading assumes importance and, in the absence of requisite pleading, no relief could have been granted by the Courts below. Reliance was placed by Mr. Anturkar on a judgment of this Court in the case of **Cristina Marques Vs Lily Dias Alias Lilia Dias Toscano Alias Lily Dias Toscano**.<sup>1</sup>

7. Mr. Anturkar further submitted that, there is not an iota of material to show that the villagers of Baner have been exercising he right to celebrate *Bagad festival* at the suit property since long. Bald assertions have been made in the Plaint that the said festival has been celebrated since 400-500 years, sans any material to *prima facie* substantiate the said claim. If the said right has been exercised since

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<sup>1</sup> 2021 (4) MhLJ 788.

time immemorial, Mr Anturkar would urge, there must have been evidence in the form of its reference in the village and revenue record and permissions from regulatory authorities. Even the Affidavits of the villagers who claimed that they had been participating or witnessing the celebration of the said festival have not been filed. In the absence thereof, the Courts below have committed a gross error in granting the injunction, on the basis of photographs which are of doubtful credence.

8. In opposition to this, Mr. Bhuskute, the learned Counsel for Respondent Nos. 1 to 10, would urge that no interference is warranted in the well-reasoned discretionary orders passed by the Court below, in exercise of the limited supervisory jurisdiction of this Court. Joining the issue with Mr. Anturkar on the aspect of absence of pleadings, Mr. Bhuskute submitted the averments in the Plea and the Applications for grant of interim reliefs demonstrate all essential elements of a valid custom, its continuous exercise and antiquity. The Plaintiffs have referred to historical facts and the uninterrupted exercise of the right to celebrate *Bagad festival* at the suit property openly and to the knowledge of the Defendants and their predecessor-in-title, by the body of the villagers as a whole. In contrast, Mr. Bhuskute would urge the aforesaid claim of the Plaintiffs went virtually untraversed in the Reply filed on behalf of the Defendant to the Application for temporary injunction. It was in this backdrop, the Courts below were fully justified

in returning findings that the Defendants did not controvert the case set up by the Plaintiffs. By way of an afterthought, Mr. Bhuskute would urge, in the Written Statement filed on behalf of Defendant Nos. 1 and 2, the assertions in the Plaint were sought to be denied and, therefore, at this stage, the findings of the Courts below cannot be questioned by reference to the denial of the Plaintiffs claim in the Written Statement.

9. Mr. Bhuskute also countered the submissions on behalf of Defendant Nos. 1 and 2 that there was no material to demonstrate the celebration of the *Bagad festival* at suit property. Banking upon the Sale Deed dated 28<sup>th</sup> March 1967, executed by the members of the Murkute family in favour of Ratnakar Bharvirkar, especially the description of the property therein, Mr. Bhuskute would urge the use of the suit property for the *Bagad festival* is explicitly borne out from the said instrument. It was submitted that only after Defendant Nos. 1 and 2 acquired the suit property from M/s Mankanis Builders, the right of the villagers to celebrate the *Bagad festival* was sought to be put in contest and, therefore, the absence of entries in the village and revenue records do not impair the case of the Plaintiffs. At any rate, Mr Bhuskute would urge, the Plaintiffs have placed on record the photographs depicting the celebrations of the *Bagad festival* at the suit property since the year 1998. Two of the co-owners of Survey No. 288 have filed Affidavits to support the claim of the Plaintiffs. This material, in the absence of

specific denial on the part of Defendant Nos. 1 and 2, is sufficient, at this stage, to sustain the order of injunction, submitted Mr. Bhuskute.

10. Mr. Anturkar made an endeavour to urge that, the Affidavits of the Kasturchand Bhausahab Murkute and Aniket Balasaheb Murkute are of no avail to Plaintiffs as their names do not appear on the Record of Rights of Survey No. 288. The reliance on the Sale Deed of the year 1967 was also stated to be misplaced as the said instrument, even if taken at par, does not even remotely refer to the use of the suit property for the celebration of *Bagad festival*.

11. The aforesaid submissions now falls for consideration.

12. To begin with, it is necessary to determine the legal norm on the touchstone of which the controversy at hand deserves to be determined, albeit *prima facie*. As noted above, the thrust of the submissions of Mr. Anturkar was that the Plaintiffs have failed to demonstrate that the villagers of Baner can claim customary easement under Section 18 of the Indian Easements Act, 1882 (“Easements Act, 1882”). The absence of pleadings and material to substantiate the case of customary easement was sought to be built upon the edifice of customary easement purported to be claimed by the Plaintiffs. In contrast, the submissions of Mr. Bhuskute revolved around the exercise of the right by the villagers of Baner to celebrate *Bagad festival* at the suit property. Thus before venturing into examining the issue of justifiability of the

exercise of discretion by the Courts below, in the light of the facts that obtain, the true nature of the claim of the Plaintiffs is required to be appreciated.

**13.** The Plaintiffs have approached the Court with a clear case that, every year, on the occasion of Hanuman Jayanti, the villagers of Baner celebrate *Bagad festival* in the open land in front of “*Shree Bhairavnath Paduka Mandir*” situated at Survey No. 288. The Plaintiffs thus assert a right over the suit property that purportedly exists in gross in a fluctuating body of the villagers of Baner and not in particular individuals who draw support and sustenance to their claim from the proprietary and possessory title over any other property. Whether a claim of such a nature can be termed as a customary easement, with all rights and limitations attached thereto, governed by the provisions of the Easements Act, 1882 ?

**14.** The aforesaid question brings to the fore the classical distinction between the customary easements and customary rights. The rights which are exercised by a community or body of persons, by virtue of a custom, are not easement but rights in gross. A customary right is not an easement. An easement must always be appurtenant to a dominant tenement. It is trite an easement belongs to a determinate person or persons on account of his/their relation with dominant tenement. An indeterminate and fluctuating body of persons, like the

inhabitants of a particular village, or public or community, cannot have an easement. In other words, the easements are private rights belonging to definite person(s) whilst customary rights are often public rights annexed to the place in general.

**15.** The aforesaid position becomes abundantly clear from the provisions of the Easements Act, 1882. Section 2(b) of the Easements Act, 1882 declares that nothing therein contained shall be deemed to affect any law not thereby expressly repealed; or to derogate from any customary or other right (not being a licence) in or over immovable property which the Government, the public or any person may possess irrespective of other immovable property. Section 4 of the Easements Act, 1882, defines an easement as a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own.

**16.** A conjoint reading of Section 2(b) and Section 4 of the Easements Act, 1882 would thus make it crystal clear that, an easement is always appurtenant to the dominant tenement and is inextricably attached to the dominant tenement and cannot be severed from it. Conceivably, there can be no easement without dominant tenement and a servient tenement. Thus, a customary right to which the Easements Act, 1882

refers and, yet, does not govern, is materially distinct from a customary easement. A customary right is a right over property that exists in gross and not for the beneficial enjoyment of the other property. It is the right of the community or right recognised by the community as a whole.

17. With the aforesaid clarity on the marked distinction between a customary easement and a customary right, if the case set up by the Plaintiffs is appraised, it becomes abundantly clear that, the suit, in a sense, asserts customary right of the villagers of Baner over the suit property, de hors the claim of ownership or possession over the properties adjoining to, or in the vicinity of, the suit property. The claim of the Plaintiffs is that the villagers of Baner as a body or community have been exercising the right to celebrate *Bagad festival* over the suit property since time immemorial.

18. In the aforesaid view of the matter, the submissions of Mr. Anturkar premised on the nature of the claim of the Plaintiffs being that of customary easement, do not merit acceptance. Nonetheless, the issue as to whether there is *prima facie* material to show the existence of the custom, with all its classical elements, deserves to be appreciated.

19. To establish a custom, a person claiming the customary right is required to demonstrate that:

- (a) the custom/usage is ancient or from time immemorial;
- (b) the usage is regular and continuous;

- (c) the usage is certain and not varied; and
- (d) the usage is reasonable. (**Ram Kanya Bai And Anr Vs Jagdish and Ors<sup>2</sup>**)

**20.** A long usage of the custom is indispensable for its recognition and validity. Indeed the custom derives its force from the fact that it has a long usage. However, it does not seem to be an immutable rule of law that the antiquity of the custom, in every case must be traced back to a period beyond the memory of the man, during whose lifetime the custom is contested. Undoubtedly, the usage must be of long duration. But the longevity of duration cannot be measured in a straight-jacket and it would hinge upon the fact-situation of the case.

**21.** A useful reference in this context can be made to the judgment of the Supreme Court in the case of **Patneedi Rudrayya Vs Velugubantla Venkayya And Ors,**<sup>3</sup> wherein the concept of “time immemorial” was expounded. The Supreme Court enunciated that, a phenomenon is said to be happening from “time immemorial” when the date of its commencement is not within the memory of man or the date of its commencement is shrouded in the mists of antiquity.

**22.** In the case at hand, the primary objection to the existence of the custom mounted on behalf of Defendant Nos. 1 and 2 was that there was no material to show that the custom was ancient or has been

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<sup>2</sup> AIR 2011 SC 3258.

<sup>3</sup> AIR 1961 SC 1821.

followed since time immemorial. In the Complaint, the Plaintiffs have referred to the existence of the two temples and the celebration of the *Bagad festival* since 400 to 500 years. (Paragraphs 3 and 13 of the Complaint).

**23.** In the aforesaid context, the approach of the Courts below in determining the issue of long usage in the light of the reply filed on behalf of Defendant Nos. 1 and 2 requires appraisal. In the reply to the Application for temporary injunction filed on behalf of Defendant Nos. 1 and 2, which in a sense, constituted the first statement of defence on behalf of Defendant Nos. 1 and 2, it appears that, Defendant Nos. 1 and 2 were more content on questioning the tenability of the suit, and the perceived technical and procedural defects in the frame of the suit.

**24.** In response to paragraph 3 of the Application for temporary injunction, (which spelled out plaintiffs case) the only contention that was raised on behalf of Defendant Nos. 1 and 2 was that, the said assertions had no nexus with the suit property. The entire case of the Plaintiffs in regard to the existence of the temple, the celebration of the festivals including *Bagad festival* on the occasion of Hanuman Jayanti over the suit property, the rituals performed therein and the antiquity thereof went completely untraversed.

**25.** In the aforesaid backdrop, the Courts below were within their rights in recording a *prima facie* finding that there was no controversion

to the claim of the Plaintiffs in regard to the celebration of *Bagad festival* since long. At that stage, the Courts were required to determine the entitlement for interim relief based on the pleadings and material on record and justifiably construed the non-traverse against Defendant Nos. 1 and 2. I find substance in the submission of Mr. Bhuskute that the subsequent denial in the Written Statement of each and every assertion in the Plaint does not enure for the benefit of the Defendant Nos. 1 and 2 in assailing the legality and propriety of the exercise of discretion by the Courts below.

**26.** Notwithstanding the aboveresferred non-traverse, this Court proposes to evaluate whether the Courts below have exercised the discretion on the basis of objective and relevant material. Apart from the photograph depicting the celebration of Bagad Festival over the years, the other material placed on record on behalf of the Plaintiffs also *prima facie* lends support to the claim of the Plaintiffs.

**27.** The Sale Deed dated 28<sup>th</sup> March 1967, purportedly executed by Bhau Shankar Murkute and others in favour of Ratnakar Bharvikar, containing the description of the property conveyed thereunder, becomes relevant under Section 13 of the Evidence Act, 1872, whereunder any transaction by which the right or custom in question was created, claimed, modified, recognised, asserted or denied or which was inconsistent with its existence as well as particular instances in

which the right or custom was claimed, recognized or exercised or in which its exercise was disputed, asserted or departed from, would be relevant facts, where the question is as to the existence of any right or custom. It is true, *prima facie*, there is a discrepancy in the description of the suit property sold under the Sale Deed dated 28<sup>th</sup> March 1967, and the subsequent Sale Deeds dated 24<sup>th</sup> August 1987 and 24<sup>th</sup> February 2022; the later in favour of the Defendants. Yet, whether the said description of the property in the Sale Deed dated 28<sup>th</sup> March 1967, recognises the existence of the customary right of the villagers over the suit property, would be a matter for evidence.

**28.** The Affidavits of Kasturchand Bahusaheb Murkute and Aniket Balasaheb Murkute, who claimed to be the co-owners of the land forming part of Survey No. 288, also become relevant under Section 48 of the Evidence Act, 1872, as when the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

**29.** Though Mr. Anturkar attempted to demonstrate that the Affidavits of Kasturchand Murkute and Aniket Murkute are bereft of any value as their names do not find mention in the Record of Rights of Survey No. 288 as the co-owners, yet, the very stand of Defendant Nos. 1 and 2 belies the said contention. In the reply to the Application for

temporary injunction, Defendant Nos. 1 and 2 have sought to draw mileage from the fact that Kasturchand Murkute and Aniket Murkute, who were initially joined as Plaintiffs Nos. 2 and 7, were required to be deleted from the array of the Plaintiffs as they were the co-owners of the larger property and thus could not have asserted customary rights.

**30.** Lastly, it is necessary to note the situation at site. The existence of the “*Shree Bhairavnath Paduka Mandir*” is incontestable. It is also incontrovertible that, the suit property is situated in front of the said temple. The fact that the suit property has retained the character of an open land defying the large scale development at Baner transforming it into a prime residential area of Pune may also have a bearing at the final adjudicating.

**31.** In the light of the aforesaid situation at the suit site and *prima facie* material to demonstrate the exercise of the customary right by the inhabitants of Baner; annually, the exercise of discretion by the Courts below cannot be said to be either perverse or in violation of the settled principles of law. Resultantly, the submissions of Mr. Anturkar that Defendant Nos. 1 and 2’s constitutional right to property is infringed sans any *prima facie* material in support of the right of the Plaintiffs cannot be countenanced.

**32.** In any event, this Court, in exercise of the supervisory jurisdiction is not expected to reweigh, re-appreciate and review the material on the

basis of which the Courts below have exercised the discretion. The writ jurisdiction is corrective in nature. It cannot be converted into an Appellate jurisdiction in disguise.

**33.** A useful reference in this context can be made to the Constitution Bench judgment of the Supreme Court in the case of **Rajendra Diwan vs. Pradeep Kumar Ranibala and Anr,**<sup>4</sup> wherein the limits of the writ jurisdiction were expounded as under:

“85. The power of superintendence conferred by Article 227 is, however, supervisory and not appellate. It is settled law that this power of judicial Superintendence must be exercised sparingly, to keep subordinate courts and tribunals within the limits of their authority. When a Tribunal has acted within its jurisdiction, the High Court does not interfere in exercise of its extraordinary writ jurisdiction unless there is grave miscarriage of justice or flagrant violation of law. Jurisdiction under Article 227 cannot be exercised “in the cloak of an appeal in disguise”.

86. In exercise of its extraordinary power of superintendence and/or judicial review under Articles 226 and 227 of the Constitution of India, the High Courts restrict interference to cases of patent error of law which go to the root of the decision; perversity; arbitrariness and/or unreasonableness; violation of principles of natural justice, lack of jurisdiction and usurpation of powers. The High Court does not re-assess or re-analyze the evidence and/or materials on record. Whether the High Court would exercise its writ jurisdiction to test a decision of the Rent Control Tribunal would depend on

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<sup>4</sup> (2019) 20 SCC 143.

the facts and circumstances of the case. The writ jurisdiction of the High Court cannot be converted into an alternative appellate forum, just because there is no other provision of appeal in the eye of law.”

**34.** The upshot of the aforesaid consideration is that, this Court does not find any jurisdictional error, patent illegality or perversity in the orders passed by the Courts below. Hence, the impugned order does not warrant any interference.

**35.** Resultantly, the Petition deserves to be dismissed.

**36.** At the same time, since the Defendant Nos. 1 and 2 would be deprived of exercising their rights of ownership over the suit property to the fullest, it would be appropriate that the suit is decided as expeditiously as possible. Therefore, the hearing of suit RCS No. 639/2024 deserves to be expedited.

**37.** Hence, the following order:

**: O R D E R :**

- (i) The petition stands dismissed.
- (ii) The hearing of suit RCS No. 639 of 2024 stands expedited.
- (iii) No Costs.
- (iv) Rule discharged.

**[N. J. JAMADAR, J.]**