

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5211 OF 2015

Municipality Kundalwadi,
Through Chief Officer,
Kundalwadi, Tq. Billoki,
Dist. Nanded

...PETITIONER

versus

1. Abdulla Khan S/o Wahed Khan
Age-73 years, Occup: Agriculture,
2. Karimkhan S/o Asad Khan,
Age-75 years, Occup.: Agriculture,
3. Saber Khan S/o Asad Khan,
Age-61 years Occu: Agriculture,
4. Wahid Khan S/o Asad Khan,
Age- 58 years Occup: Agriculture,
5. Samiullah Khan S/o Asad Khan,
Age : 60 yrs, Occup.: Agriculture,
6. Zuber Khan S/o Asad Khan,
Age : 56 yrs, Occup.: Agriculture,
7. Latif Khan S/o Asad Khan,
Age : 54 yrs, Occup.: Agriculture,
8. Aref Khan S/o Asad Khan,
Age : 53 yrs, Occup.: Agriculture,
9. Asif Khan S/o Asad Khan,
Age : 49 yrs, Occup.: Agriculture,
10. Khalil Khan S/o Tilwat Khan,
Age : 48 yrs, Occup.: Agriculture,
11. Jalilkhan S/o Tilwat Khan,
Age : 54 yrs, Occup.: Agriculture,
All R/o Kundalwadi, Tq. Billoli,
District Nanded.

...RESPONDENTS

.....
Mr. A.S. Deshpande, Advocate for Petitioner
Mr. Mohd Musa, Advocate for respondent No. 1
.....

CORAM : SUNIL P. DESHMUKH, J.

DATED : 7th MAY, 2015

Order :-

1. After hearing learned counsel for petitioner and respondent No. 1, it appears that Regular Civil Suit No. 90 of 2012 had been instituted by present respondents-plaintiffs for cancellation of agreement to sell dated 19-12-1972 and for recovery of possession of the suit land and for perpetual injunction, restraining the defendant-petitioner from changing its nature. The suit appears to have been decreed on 19-08-2014 and the matter has been carried by present petitioner-original defendant in Regular Civil Appeal No. 54 of 2014, which is pending before District Judge-1, Billoli. Along with the appeal, an application seeking stay to the operation and execution of the impugned decree has also been filed and appears to have been granted on 31-03-2015. It also appears that during pendency of the appeal, certain construction is tried to be carried on over the suit land, and as such, application at Exhibit-10 had been moved by original plaintiffs-respondents in Regular Civil Appeal No. 54 of 2014, praying for restraint on the appellant-original defendant - Municipality Kundalwadi and to maintain the *status-quo* in

respect of the nature of the suit property. Said application has been granted by the appellate court on 18-04-2015, and as such, the petitioner-appellant is before this court questioning propriety and legality of the order impugned in this petition.

2. Mr. Deshpande, learned counsel for the petitioner vehemently submits that construction of drainage line is in progress and is in advanced stage, however, interception has been caused in the same at the instance of the respondents-plaintiffs under the impugned order in the present petition. It is requested that looking at the nature of the dispute and progress in the work, order be quashed and set aside.

3. Learned counsel for respondent No.1 submits that if construction of such work is allowed over the suit property that would tantamount to prejudging of the issues pending in the appeal as on the date in favour of petitioner-defendant. In such a case, letting the petitioner to construct drainage line over the suit land would cause permanent hindrance to him in getting back the suit land. He further submits that it would be appropriate that the appeal is taken up for final disposal at an early date, in order get out of present imbroglio.

4. Taking into account aforesaid, I deem it appropriate that the situation can be resolved by directing the appellate court to

decide the appeal itself at an early date.

5. Accordingly, District Judge-1, Billoli shall decide Regular Civil Appeal No. 54 of 2014 as expeditiously as possible, preferably by 15th July, 2015. It would be incumbent upon the petitioner/appellant to make appeal ready for final disposal on or before 30-06-2015.

6. With these directions, writ petition stands disposed of.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK