

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8553 OF 2013

1. Santosh Ramchandra Thokal,
Age 31 yeas, Occ. Service and
Agriculture, R/o Kamargaon,
Tq. and Dist. Ahmednagar.

2. Sachin Ramchandra Thokal,
Age 27 Years, Occ. Service and
Agriculture, R/o as above.

..Petitioners

Versus

1. The state of Maharashtra,
Through the Collector,
Aurangabad.

2. The Tahsildar,
Nagar Taluka, T.V. Center,
Tq. and Dist. Ahmednagar.

3. The Dy.Executive Engineer,
Public Works Department,
Nagar-Aurangabad Road,
Ahmednagar.

4. Chhagan Haibatrao Katore,
Age 66 years, Occ. Pensioner
and Agriculture, R/o Kamargaon,
Tq. and Dist. Ahmednagar.

..Respondents

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Advocate for Petitioners : Shri Bedre V.S. h/f Shri Badakh Vishal S.
AGP for Respondents 1 to 3 : Smt. Shelke S.D.
Advocate for Respondent 4 : Shri Narwade Narayan B.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 19, 2015
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ORAL JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioners are aggrieved by the order dated 25.7.2013 passed by the trial Court below application Exhibit 61 seeking grant of mandatory interim injunction in Regular Civil Suit No. 939 of 2012. Exhibit 61 has been rejected.

5. The petitioners submit that they have preferred the above stated Civil Suit for seeking perpetual injunction against respondents. Application Exhibit 61 was filed by the petitioners plaintiffs alleging that the fourth respondent is likely to carry out construction over a particular portion described therein. Mandatory interim injunction was prayed for so as to avoid any construction being made by the said defendant No.4 and that too which is just 40 meters from the center of the highway. By the impugned order, the said application has been rejected.

6. Grievance of the petitioners is that the said construction would frustrate the claim and rights of the petitioners. Respondent Nos.1 to 3 should have acted diligent and should have prevented the said construction. It is stated that now the construction is complete and the fourth defendant has erected three shops.

7. Shri Bedre, therefore, submits that the suit property needs to be restored to its original position as on the date of the institution of the suit and if need be, the constructed portion be demolished.

8. Shri Narwade, learned Advocate appearing on behalf of the fourth defendant / contesting party submits that an application has already been preferred on 7.9.2012 before the trial Court by the petitioners alleging illegal construction and violation of the temporary injunction granted to the petitioners through Exhibit 5 under Order XXXIX Rule 1 of the Code of Civil Procedure, which was allowed on 28.8.2012. Since the said application is pending, there is no necessity for this Court to take up the plea of the petitioners that the construction has been carried out in opposition to the temporary injunction granted.

9. I have heard the learned Advocates and I have considered the fact situation. The Civil Suit is pending adjudication. Application under Order XXXIX Rule 2 of the CPC is pending. The construction which is alleged to be illegal, has already been erected.

10. In these peculiar facts and circumstances, ends of justice would be met by ordering that the said construction erected by defendant No. 4 / respondent No.4 herein, shall be subject to result of the litigation in between the litigating sides. No equities shall, therefore, be created in favour of the fourth respondent, merely on the ground that the construction has already been erected.

11. In the light of the above, this petition is disposed off by observing that the said construction at issue would be subject to the result of the litigation between the plaintiffs and the defendants and no equities shall be created in favour of the fourth defendant merely on the ground that the construction is now erected and is completed.

12. The trial Court shall endeavour to decided RCS No.939 of 2012 as expeditiously as possible and the litigating sides shall refrain from seeking adjournments on trivial grounds.

13. Rule is discharged. No costs.

(RAVINDRA V. GHUGE, J.)

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akl/d