

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10297 OF 2014

PRATIBHA TANAJI MORE
VERSUS
ZILLA PARISHAD, HINGOLI AND ANOTHER

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Advocate for Petitioner : Shri Kalani Pravin N.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 07, 2015
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PER COURT :-

1. In RCS No.26 of 2009, instituted by the petitioner / plaintiff, issues have been cast on 16.9.2009. It is not in dispute that the recording of evidence in the matter has concluded and subsequently, the petitioner has filed an application Exhibit 90 dated 14.10.2014 under Order VI Rule 17 of the CPC proposing the prayer as follows:-

“ Mandatory Injunction against the defendants that the construction made over the suit property of water tank or any other construction may kindly be demolished.”

2. By the impugned order dated 14.10.2014, application Exhibit 90 has been rejected. Grievance of the petitioner is that he has sought the vacant possession of the suit property. By dis-allowing the introduction of the prayer as recorded above, irreparable harm is likely to be caused to the petitioner. The impugned order is perverse and is, therefore, unsustainable.

3. Having heard the learned Advocate and having gone through the petition paper book with his assistance, I find that it is not in dispute that the school was constructed over the land and the petitioner had not sought any injunction as against the said construction. Since 1999, the construction of the said Zilla Parishad Primary School at Chincholi-Niloba has been made. The petitioner has filed the suit only in 2009 and now seeks to restrain the defendants from construction of a water tank on the suit property. It is also not in dispute that the said primary school is functional and water tank appears to be a necessity.

4. A specific issue has been framed by the trial Court dealing with the request of the petitioner that the defendants be perpetually enjoined and the petitioner be held entitled for the recovery of the possession of the suit property. In my view, in the event the petitioner establishes his right, the trial Court would be passing consequential orders.

5. When the matter was fixed for final arguments from 22.8.2014, despite the defendants having filed their written notes of arguments, the petitioner is yet to, either commence his oral submissions or file his written notes of arguments. The trial Court has also noted that there is no relief sought in the suit as regards mandatory injunction or direction to hand-over the vacant possession of the suit property by demolishing the school building. It was, therefore, concluded that the proposed prayer would change the nature of the cause of action.

6. Taking into account the above aspects, I am not convinced that the impugned order could be termed as perverse or erroneous so as to cause grave injustice to the petitioner. As such, the Writ Petition is dismissed.

(RAVINDRA V. GHUGE, J.)

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