

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4749 OF 2015

Dapoli Nagarpanchayat through Chief Officer ... Petitioner
Vs.
Arvind Chandrahas Pusalkar & others ... Respondents

Mr. Sanskar Marathe for Petitioner.

Mr. Puneet Gogad a/w. Ms Rita Yadav for Respondents No.1 and 2.

CORAM : R. G. KETKAR, J.

DATE : 11TH JUNE, 2015

P.C. :

Heard Mr. Marathe, learned Counsel for petitioner and Mr. Gogad, learned Counsel for respondents No.1 and 2 at length.

2. By this Petition under Article 227 of the Constitution of India, the original defendant No.1 has challenged the judgment and order dated 19.03.2015 below exhibit-6 in Regular Civil Suit No.29 of 2015 passed by the learned Civil Judge Junior Division, Dapoli as also the judgment and order dated 24.04.2015 in Civil Miscellaneous Appeal No.7 of 2015 passed by the learned District Judge-1, Khed. By these orders, the Courts below allowed the application at exhibit-6 filed by respondents No.1 and 2, hereinafter be referred to as the plaintiffs and issued mandatory injunction directing the petitioner, hereinafter be referred to as the defendant No.1 to remove the sealed pipe attached to the septic tank within 8 days.

3. In support of this Petition, Mr. Marathe strenuously contended that the Courts below committed serious error in allowing the application. The Courts below allowed the application mainly on the ground that the toilet along with septic tank is there for more than 30 years. The Courts below failed to appreciate that the well of the

respondent No.3, hereinafter be referred to as the defendant No.2, is situate near the septic tank and the water is contaminated by the waste water discharged from the septic tank of the plaintiffs. He submitted that the Courts below failed to take into consideration the report dated 05.03.2015 which show that after the pipe was sealed, the water was potable. In other words, so long as the pipe was not sealed, the water of well of the defendant No.2 used to be polluted because of the discharge of waste water from the septic tank of the plaintiffs. The Courts below also did not consider the proximity of wells situate near the plaintiffs' property. He further submitted that this was not the fit case for issuing mandatory injunction against the defendant No.1.

4. On the other hand, Mr. Gogad supported the impugned orders. He submitted that the Courts below, after considering the material on record, have held that the action of the defendant No.1 in sealing the pipe attached to the septic tank / toilet was not justified and accordingly issued mandatory injunction. He further submitted that in pursuance of the impugned orders, defendant No.1 has already removed the seal. He, therefore, submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

5. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. From perusal of the record, it is evident that plaintiffs have constructed toilet and septic tank some time in the year 1979. The Courts below also held that defendant No.1 had conducted spot inspection and during the spot inspection, it was found that there are other 3 septic tanks near the well of the defendant No.2. It was also noted by the learned District Judge that prima facie there is no evidence showing that only because of the waste water of the septic tank belonging to the plaintiffs, the water in the said well is being polluted.

The possibility about 3 other septic tanks polluting the well water cannot be ruled out. The Courts below also found that when the plaintiffs carried out construction 30 years back, defendant No.2 did not raise any objection. The latrine is the essential need. The action of the defendant No.1 in sealing the pipe cannot be treated as legal one.

6. After perusing the impugned orders, I do not find that the Courts below committed any error in allowing the application and also granting mandatory injunction. In the case of *Dorab Cawasji Warden Vs. Coomi Sorab Warden*, **AIR 1990 SC 867**, the Apex Court has laid down the guidelines for granting mandatory injunction. In paragraph 14, the Apex Court observed that the relief of interlocutory mandatory injunction is granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. The guidelines set out therein are to the following effect:

- “(i) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction;
- (ii) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money;
- (iii) The balance of convenience is in favour of the one seeking such relief.”

7. Applying this decision to the facts of the present case, I do not find that the Courts below committed any error in issuing mandatory injunction. In the case of *Wander Limited and another Vs. Antox India Private Limited*, **1990 (Supp.) SCC 727**, the Apex Court in paragraph 14 has observed as under:

“....., the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own

discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. The Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Limited Vs. Pothan Joseph*, (1960) 3 SCR 713, (SCR 721)

“....These principles are well established, but as has been observed by Viscount Simon in *Charles Osenton & Co. V. Jhanton*, 1942 AC 130' ... the law as to the reversal by a court of appeal of an order made by a Judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'.”

8. The said position was reiterated subsequently by the Apex Court in the case of *Ramdeo Food Products (P) Ltd. Vs. Arvindbhai Rambhai Patel and Ors.*, (2006) 8 SCC 726, and in particular paragraphs 125 to 127 thereof.

9. In the present case, defendant No.1 has not shown that the Courts below exercised the discretion arbitrarily, capriciously or perversely. Defendant No.1 was also not in a position to demonstrate that the Courts below have failed to apply principles of law regulating grant or refusal of interlocutory injunction. In view thereof, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

(R. G. KETKAR, J.)