

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7533 OF 2014

Shankar Lingoji Patil : Petitioner
versus
Bhauso Shankar Padekar : Respondent.

Mr.Sachin Chavan i/by Mr. Sameer S Tambekar for the Petitioner.
Mr. Sandesh D Patil for the Respondent.

CORAM : R. M. SAVANT, J.
DATE : 03rd September 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 3/5/2014 passed by the learned Ad-hoc District Judge -1 Kolhapur by which order the Appeal filed by the Respondent herein came to be allowed and resultantly, the order dated 27/1/2014 passed by the learned Civil Judge Junior Division, Gargoti came to be set aside and in turn the application (Exhibit 5) came to be dismissed.

2 The suit in question being Regular Civil Suit No.122 of 2013 has been filed for simplicitor injunction and the subject matter of the said suit is the land admeasuring 90 Ares in Gat No.591. The Petitioner herein who is the original Plaintiff in the suit was the owner of a large chunk of land in the said Gat No.591. The holding of the Petitioner/Plaintiff was acquired for the resettlement of the project affected persons of Chikotra Dam and out of the

said land which was acquired, an area of about 1 H 60 Rs was allotted to the Respondent who is the original Defendant as project affected person. It seems that the Petitioner made a representation to the Governmental Authorities on Lokshahi Din that he is prepared to exchange 90 Ares of land in the said Gat No.591 with the land of equivalent area in his other holding being Gat No.590. The said request was acceded to and an order came to be passed on 16/09/2003. However, since the said order was not being acted upon, the Petitioner again moved the Governmental Authorities pursuant to which an order came to be passed on 20/09/2011 by the Collector and Deputy Director of the Project Rehabilitation (Land) Kolhapur. It is pursuant to the said order dated 20/09/2011 that the Mutation Entry No.4637 came to be effected in favour of the Petitioner on 29/10/2012. In so far as the Respondent – original Defendant is concerned, as indicated above he is a project affected person, it is required to be noted that the said lands to the extent of 1 H 60 Rs came to be allotted to him on 16/10/2007 by the District Rehabilitation Officer. The panchanama as well as the possession receipt in respect of taking over possession and handing over possession is also executed on the same day i.e. 16/10/2007.

3 On the ground that the Defendant is interfering with his possession in respect of 90 Ares of land in Gat No.591, that the suit in question came to be filed for simplicitor injunction against the Defendant and also for

claiming the relief that the Defendant should be restrained from interfering with the Plaintiff's possession and also preventing the Plaintiff from sending the sugarcane to the sugar factor for crushing. In the said suit the Defendant filed his written statement cum reply to the application for temporary injunction filed by the Plaintiff.

4 The Trial Court considered the said application for temporary injunction and by its order dated 27/01/2014 allowed the said application. The said application was probably allowed on the ground that the Petitioner/Plaintiff's request on the Lokshahi Din was accepted, pursuant to which the order dated 16/09/2003 came to be passed and thereafter the order dated 20/09/2011 came to be passed as also the Mutation Entry No.4637 came to be effected in favour of the Plaintiff. The Trial Court was of the view that the presumption which arises on account of mutation entry has not been rebutted by the Defendant by cogent material. The Trial Court therefore deemed it appropriate to allow the application for temporary injunction.

5 The Defendant aggrieved by the said order dated 27/1/2014 passed by the Trial Court took exception to the same by filing Misc. Civil Appeal No.50 of 2014. The Lower Appellate Court on re-appreciation of the material on record, came to a conclusion that the Trial Court had erred in granting injunction to the Plaintiff. The Lower Appellate Court was of the view

that the mutation entry in favour of the Plaintiff No.4637 on which much reliance was placed by the Trial Court could not be given much credence in view of the fact that the said entry has been made unilaterally. The Lower Appellate Court also observed that the Plaintiff has not satisfied as to how he has got possession in view of the order passed on Lokshahi Din. The Lower Appellate Court observed that since the Plaintiff has failed to prove that he has received the possession of the property, therefore the balance of convenience was not in favour of the Plaintiff. The Lower Appellate Court was of the view that the question of title and possession is a question which would have to be gone into and adjudicated in the suit.

6 The learned counsel appearing on behalf of the Respondent draws this Court's attention to the order dated 28/02/2008 passed by a learned Single Judge of this Court in Writ Petition No.7865 of 2007 by which order the said Writ Petition filed by the Petitioner herein came to be dismissed by observing that the possession of the land which was the subject matter of the said Writ Petition was already taken and therefore there was no merit in the said Writ Petition. The learned counsel for the Respondent also points out that the sugarcane has been sent by the Respondent to the concerned sugarcane factory which factum proves the possession of the Defendant. It is required to be noted that the Lower Appellate Court on the re-appreciation of the material on record has come to a conclusion that it is the Defendant who is in

possession and not the Plaintiff. The aforesaid two facts further fortify the said finding that it is the Defendant who is in possession and not the Plaintiff.

7 In my view, the Lower Appellate Court has for cogent reasons upset the order passed by the Trial Court. Hence no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]