

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION STAMP NO.32359 OF 2014**

Dattatraya Ramchandra Pharande and ors. : Petitioners
versus
Chief Officer,
Satara City Municipal Council, Satara & ors. : Respondents.

Mr. Akshay P Shinde for the Petitioners.

CORAM : R. M. SAVANT, J.
DATE : 15th January 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 5/11/2014 passed by the learned District Judge-3, Satara by which order the Appeal filed by the Respondent No.1 i.e. the Municipal Council, Satara came to be allowed and resultantly, the order dated 24/7/2014 passed by the Trial Court i.e. the learned 3rd Joint Civil Judge, Senior Division, Satara allowing the Application (Exhibit 5) for injunction filed by the Petitioners – original Plaintiffs came to be set aside.

2 The suit in question being Regular Civil Suit No.230 of 2014 has been filed for injunction restraining the Respondent No.1 herein i.e. the original Defendant No.1 Municipal Council, Satara in the suit from laying a pipeline from the land which is of the ownership of the Petitioners/Plaintiffs upto the lands of the land holders on the northern side so as to provide them water connections. The land in question is a land bearing City Survey

No.223/4 admeasuring 152.82 sq.mtrs which is more specifically described as 15 ft. in width and 100 ft in length south-north road. The said land is a road and in respect of which the dispute has been raised in the suit. It appears that the said land having the dimensions which have been referred to herein above has been paved with pavor blocks and there is a gutter. A pipeline of 50 mm was laid underneath the suit land. This was done sometime in the year 1980 by following the procedure for the same. It seems to augment the water supply, the Respondent No.1 – Municipal Council thought of increasing the width of the water mains from 50 mm to 100 mm and therefore proposed to re-lay the water mains beneath the land of the Petitioners/Plaintiffs so as to provide water connections to the land holders of City Survey Nos.240, 241, 242, 245 and 247 which lands are on the northern side of the said City Survey No.223/4. It seems the work was started by the Respondent No.1-Municipal Council upon which the instant suit being Regular Civil Suit No.230 of 2014 came to be filed for restraining the Respondent No.1 – Municipal Council from laying the said pipeline. The suit of the Petitioners/Plaintiffs is founded on the fact of their ownership in respect of the land in question which land was purchased by them from one Chintamani Ramchandra Panditrao and his other family members. It is the case of the Plaintiffs that the Respondent No.1 – Municipal Council does not have any right to lay down the pipeline beneath the land of the Plaintiffs i.e. the land bearing Survey No.223/4. It is the case of the Plaintiffs that on the said land paver blocks have been put and that there is

a drainage running. An apprehension is expressed by the Petitioners/Plaintiffs that if the pipeline is laid down, then the owners of the lands on the northern side would then seek to assert some right in respect of the suit land.

3 In the said suit an Application (Exhibit 5) came to be filed by the Petitioners/Plaintiffs for temporary injunction. The said Application came to be replied to by the Respondent No.1 – Municipal Council. The Respondent No.1 – Municipal Council mentioned the antecedent facts that 50 mm pipeline being laid below the land of the Plaintiffs as also that there is a requirement of laying 100 mm pipeline so as to provide water to the land holders of the northern side.

4 The said Application (Exhibit 5) was considered by the Trial Court. The Trial Court principally on the ground that the Plaintiffs are undisputedly the owners of the land in question held that the Respondent No.1 – Municipal Council is required to be injuncted from laying a pipeline as the pipeline could not be laid beneath a private property. The Trial Court also seems to have been swayed by the fact that the Plaintiffs had pleaded that there are other Municipal Roads beneath which the pipeline could be laid. The Trial Court accordingly by its order dated 24/7/2014 allowed the said Application (Exhibit 5) and thereby restrained the Respondent No.1 - Municipal Council from laying the pipeline.

5 The Defendant No.1 i.e. the Respondent No.1 – Municipal Council aggrieved by the said order dated 24/7/2014 carried the matter in Appeal. The Lower Appellate Court having regard to the provisions of Section 205 read with Section 218 of the Maharashtra Municipalities Act held that the Chief Officer of the Municipal Council is vested with the necessary powers to lay a pipeline beneath a private property. The Lower Appellate Court also considered the fact that the pipeline has already been laid from which the Plaintiffs have been given water supply but the objection of the Plaintiffs is to the connection being granted to the land holders on the northern side . The Lower Appellate Court held that having regard to the fact that the mains have also been laid earlier and what is now sought to be done is only changing the size of the water mains, and having regard to the provisions of Section 205 read with Section 218 of the Maharashtra Municipalities Act the objection of the Plaintiffs cannot be entertained. The Lower Appellate Court recorded a finding that the Trial Court has granted injunction without considering the provisions of the Maharashtra Municipalities Act, 1965, and therefore in view therefore reached an erroneous conclusion that no water connection can be provided through the water mains running through the suit land.

6 In my view, the Lower Appellate Court has for cogent reasons, set aside the order passed by the Trial Court granting injunction, as the Trial Court

had granted injunction without considering the statutory provisions. Having heard the learned counsel for the Petitioners/Plaintiffs and having perused the order passed by the Courts below, 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]