

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

WRIT PETITION NO.5443 OF 2013

Shri. Pritamsingh A. Birdi

.. Petitioner

Versus

Nashik Municipal Corporation and others

.. Respondents

Mrs. Jai Kanade a/w Mr. S. S. Kothari, for the Petitioner.

Ms. Manisha Jagtap i/by J. Shekhar & Co., for the Respondent Nos.1 & 2.

Mr. S. M. Gorwadkar, Senior Advocate a/w Kuldip T. Pawar and Sujay Gangal, for the Respondent Nos.3 to 6.

CORAM : R.M. SAVANT, J.

DATE : 25th AUGUST, 2015

P.C.

1. The above Petition takes exception to the order dated 07.05.2012 passed by the Learned District Judge-5, Nashik, by which order the Civil Misc. Appeal No.97 of 2011 filed by the Petitioner came to be dismissed and resultantly, the order dated 21.09.2011 passed by the Learned 5th Joint Civil Judge, Senior Division, Nashik rejecting the application Exh.5 came to be confirmed. There is therefore a concurrent finding recorded by the Courts below as regards the entitlement of the Petitioner to the grant of discretionary relief of temporary injunction. The subject matter of the suit in question is the land admeasuring 23 Ares

which is to the south to the lands of the Respondent Nos.3 to 6 and to the west of the lands of the Petitioner. Both the Petitioner and the Respondents claim title to the said land. It is not necessary to dilate further on the said aspect. The Respondent Nos.3 to 6 though had commenced construction on the plot of land had excluded the disputed portion and I am informed that the said disputed portion is kept open and earmarked as compulsory open space. The Respondent Nos.3 to 6 have constructed a structure and presently a primary and secondary school is being conducted in the said structure. Both the Courts below have therefore in the background of the aforestated facts and also having regard to the undertaking filed by the Respondent Nos.3 to 6 that in the event the Plaintiff's suit is decreed they would remove the construction, have refused to grant temporary injunction sought by way of Exh.5, which the Appellate Court has confirmed by the impugned order. The Appellate Court has also directed the expeditious disposal of the suit and further has directed the Trial Court to dispose of the same latest within one year of the impugned order. I am informed by the Learned Senior Counsel appearing on behalf of the Respondent Nos.3 to 6 that the suit is kept for framing of issues tomorrow.

2. In my view, having regard to the concurrent orders passed by the Courts below as also having regard to the undertaking given by the Respondent Nos.3 to 6, the interdiction of this Court in its Writ

Jurisdiction under Article 227 is not warranted. The Writ Petition is accordingly dismissed. However, the Trial Court is directed to hear and decide the suit expeditiously.

3. Needless to state that the suit would be decided on its own merits and in accordance with law uninfluenced by any observations that are made in the impugned order or in the instant order.

[R.M. SAVANT, J]