IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4865 OF 2015

Sandip Tulshiram Tupe and ors. .. Petitioners
vs.
Pune Municipal Corporation and ors. .. Respondents

Mr. G. S. Godbole i/b Mr. D.S. Patil and Ms Pallavi Dabholkar for the Petitioners.
Mr. R.S. Khadapkar and Mr. P.N. Joshi for Respondent No.1-PMC.
Mr. A.A. Kumbhakoni, Sr. Advocate and Mr. A.R. Metkari, AGP for Respondent No.3-State.

CORAM : M. S. SONAK, J.
DATE : 17 JUNE 2015.

P.C. :-

1] This petition impugns the following orders:

(a) Judgment and order dated 30 April 2015 made by the 5th Joint Civil Judge, Senior Division, Pune; and

(b) Judgment and order dated 14 May 2015 made by the District Judge-16 Pune.

2] The impugned orders deny the petitioners, interim injunction restraining the respondents, including in particular Pune Municipal Corporation (PMC) from laying pressure pipeline through the suit property, which the petitioners claim, are owned by them. By the order dated 30 April 2015, the Trial Court has held that the petitioners have not been able to make out any *prima facie* case of ownership and in any case the balance of convenience also is against the grant of any interim injunction in favour of the petitioners. The Trial Court, has observed that irreparable loss and prejudice would occasion public interest, in case, interim injunction as prayed for is granted. The Appeal Court, in exercise of restrictive parameters of interference against discretionary orders, has concurred with the Trial Court holding that the petitioners had failed to make out any *prima-facie* case.

3] Mr. Godbole, learned counsel for the petitioners, submitted that there is overwhelming material on record, particularly in the form of 7/12 extracts to indicate that the petitioners are indeed the owners of the suit property through which pressure pipeline is being laid. Mr. Godbole submitted that the PMC, which is carrying out the exercise of laying a pipeline outside its own territorial jurisdiction, has not bothered to obtain any permissions from any statutory authorities, prior to proceeding with such a project. Mr. Godbole also submitted that the 1997 agreement, upon which both the PMC as well as the State of Maharashtra placed reliance, is in fact, a fraudulent document, inasmuch as therein no reference is made to any obligation on the part of the PMC to supply treated water to the State for irrigation purposes. Reference in this regard, vaguely appears in the schedule to the agreement and even therein, the obligation for supply was restricted upto the year 2001. Mr.Godbole submitted that since the impugned orders have not appreciated such position, they deserve to be interfered with.

4] Mr. Joshi, learned counsel appearing for the PMC and Mr.Kumbhakoni, learned senior counsel appearing for the State, have defended the impugned orders, by submitting that such orders are not vitiated by any error of principle or perversity. The project in the present case, is a public project which has been substantially completed. Cores of Rupees have already been spent towards the completion of the project and only a very small portion of the project remains to be completed. The learned counsels pointed out that there is serious dispute as to whether the petitioners are indeed the owners of the suit property, as extracts from Revenue record suggest otherwise. It is also the case of the respondents that the suit property, is in fact, a *distributary* and consequently the respondents are very much entitled to lay pressure pipeline. For all these reasons, learned counsels submitted that this Court may not interfere with the impugned orders in exercise of its extra ordinary jurisdiction under Article 227 of the Constitution of India.

5] Having heard learned counsel for the parties and perused the material on record, no case is made out to interfere with the impugned orders, which have concurrently declined interim injunction to the petitioners.

6] The Trial Court, based upon the materials on record has held that the petitioners have failed to make out any *prima-facie* case as to the ownership of the suit property. The Appeal Court has also concurred with such *prima-facie* finding recorded by the Trial Court. There is serious dispute as to whether the suit property is the private property of the petitioners or whether the same constitutes a *distributary* for the purposes of irrigation. The survey record produced by both the parties, are by no means conclusive. In such circumstances, it cannot be said that there is any perversity involved in the two courts holding that the petitioners have failed to make out any *prima-facie* case in the matter.

7] That apart, in a matter of this nature, it is not sufficient that the petitioners-plaintiffs merely make out a *prima-facie* case. It is for the plaintiffs to demonstrate that the balance of convenience lies in favour of grant of interim injunction and that irreparable loss of prejudice will occasion the petitioners-plaintiffs in case such interim injunction is declined. On this count also, the petitioners-plaintiffs have failed.

8] There is no question of going into the issue as to whether the 1997 agreement entered into between the State Government and PMC is a fraudulent one or not, particularly at this stage of the proceedings. Suffice, however, to note that in pursuance of the agreement the State supplies drinking water to the PMC from out of Khadakwasla Basin and in lieu thereof there is an obligation cast upon the PMC to supply treated water to the State, so as to augment the needs of the State for irrigation purposes. The project in this regard involves provision of infrastructure by the PMC to lift 6.5 TMC water from Mula and Mutha rivers and to carry the same to Old Mutha Right Bank Canal (OMRBC). The OMRBC, then carries the water for about 111 Kms so as to facilitate the irrigation of about 20,118 Hectares of agricultural lands.

9] The aforesaid project, comprises *inter alia,* of three broad sub-projects:

(a) Construction of a Bandhara in Mula Mutha River, which work is stated to have been completed by the State at the cost of PMC, such cost being Rs.9.80 crores;

(b) Construction of Jackwell and Pump-house by the PMC, which work is also completed by the PMC at the cost of Rs.31.6 crores;

(c) Laying down of pressure pipelines from the Jackwell and Pump-house to the OMRBC, over a length of about 3.5 Km. and at a cost of Rs.57.57 crores.

10] There is material on record, which establishes that pressure pipeline to the extent of 3.1 Km., from out of the 3.5 Km has already been laid. The suit property, in terms of length, corresponds to about 340 meters, i.e., 0.34 Kms and the pressure pipeline remains to be laid thereon, due to the ad-interim orders in the present litigation. The total area of the land affected, according to the plaintiffs, is in the region of about 2000 sq.meters, though the respondents urge that the pressure pipeline is being laid beneath an area of about 1020 sq. meters. In the context of the largeness of the project, the stage at which the same has advanced and the obvious public interest involved, much does not turn upon the dispute as to the area affected. Suffice to note that the project is almost on the verge of completion and pressure pipeline remains to be laid over a portion of hardly 340 meters from out of total of 3500 meters. The project, once operational would benefit the agricultural lands to the extent of over 20,000 Hectares. The State is supplying to the city of Pune drinking water from Khadakwasla Basin and in lieu thereof there is an obligation cast upon the PMC to supply to the State treated water, which the State can eventually use for irrigation purposes. At this stage, there is really no scope for third parties like the petitioners to criticize such agreement or arrangement between the State and PMC as being fraudulent or without authority of law.

11] The case of the petitioners is that the pipeline cannot be laid without acquisition of the suit property. As noted earlier, there is a serious dispute as to the claim of the petitioners to the suit property. That apart, from the case set out by the petitioners, it is evident that the prejudice, if any, to the petitioners is compensable in terms of costs. If at the end of the trial, it is established that the suit property is indeed owned by the petitioners, the petitioners can always be suitably compensated. But if th\e project, which is at an advanced stage is now stalled and ultimately turns out that the petitioners have not rights, the loss and prejudice, not just to the PMC and the State, but also to public interest, will be immense and irreparable. Accordingly, the balance of convenience is certainly against grant of any injunction which would have the effect of stalling such a public project, which is already at such an advance stage and is in fact on verge of completion.

12] The Trial Court and the Appeal Court have applied the correct parameters and there is neither any jurisdictional error nor any perversity involved.

13] This petition is accordingly dismissed. There shall be, however, no order as to costs.

14] It is made clear that the observations in the impugned judgments and orders, as also in the present order are only *prima-facie* and therefore, the Trial Court shall not be influenced by the same, at the stage of final disposal of the suit.

15] At this stage, learned counsel for the petitioners seeks for continuance of the ad-interim relief granted in this petition, for a period of four weeks from today. Learned counsels for the respondents oppose the continuance of ad-interim relief. Considering that this is a public project, which is almost at the verge of completion, this Court is constrained to deny the continuance of interim relief. Accordingly, said request is denied.

(M. S. SONAK, J.)