

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9301 OF 2014
WITH
CIVIL APPLICATION NO.2923 OF 2014

Prabhakar Devram Lonkar & Anr. .. Petitioners
Versus
State of Maharashtra & Ors. .. Respondents

Mr.S.S.Patwardhan for petitioners
Mr.P.P.Kakade, AGP for State respondent Nos. 1 to 3
Mr.S.S.Kanetkar i/b. V.H.Narvekar for applicant in civil application
No.2923 of 2014.

CORAM : NARESH H. PATIL &
S.B.SHUKRE, JJ.

DATE : 14th July 2015.

P.C.

1] The petitioners claim to be the owners of a land situated in Survey Nos. 21, 24 and 25 of village Mundhwa, Taluka Haveli, Dist. Pune. The respondent, department, had started constructing a road from Genba Chowk to Lonkar Nagar (Orbis school). The petitioners' concern is that in case the road is passing through their lands, the respondent authorities shall not proceed further without following due process of law.

2] On behalf of respondent Nos. 1 to 3, Deputy Engineer, P.W.D. Division No.2, Mr.Chandrakant Naik has filed an affidavit on 16th December 2014. In para 4 the deponent states as under:-

“4. I state that the PWD department is not carrying out work of construction of existing road at Survey Nos. 21, 24 and 25 which according to the petitioner belong to him. However, the work of construction of the road is in progress not on the land alleged to be owned by the petitioner. The petitioner has no cause for filing present writ petition. It is denied that petitioner is the owner of the land where the work of construction of the road is in progress.”

3] During the course of hearing of the petition, the applicants intervenors have filed a civil application. It is submitted on their behalf that the said road passes through their lands, S.No.33 of the same village. It is their contention that the subject road was earmarked in sanctioned regional development plan of 1998 for

Pune and Pimpri chinchwad.

4] Learned Counsel for the petitioners submits that to resolve this controversy as to whether road is being constructed through the petitioners' land, the petitioners would apply to appropriate authority entrusted with the powers to survey and measure the concerned area.

5] We have perused the record. The question of fact raised before this court by the petitioners and intervenors, cannot be gone into in exercise of writ jurisdiction. The parties are at liberty to get their lands measured and demarcated by making appropriate application to the concerned authorities. On such application being made, the said authority shall look into the records as to whether the subject road under construction was being used since last 25 to 30 years as submitted during the course of hearing by the intervenors. After reaching appropriate decision, the said Authority shall take steps in accordance with law.

6] We, therefore, direct the Collector, Pune to call for the entire

record from the concerned authorities and issue appropriate instructions in accordance with law. We do not express any opinion in respect of the claim made by the contesting parties in respect of the said property.

7] It is informed during the course of hearing that consequent to the orders passed by this Court dated 10th October 2014, construction of the road is stopped. The Collector shall take appropriate decision in this regard. It is clarified that the ad-interim relief granted earlier is not operating now.

8] While keeping the issues on merits open, the petition is disposed of. We expect the Collector to issue necessary instructions as expeditiously as possible.

(NARESH H. PATIL, J.)

(S.B.SHUKRE, J)