

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 317 OF 2015

Kholeswar Mahadev Mandir Committee,
Ambajogai, Tq. Ambajogai, Dist. Beed .. Applicant

versus

Shaikh Rahim s/o Abdul Razzaq and ors. .. Respondents

Mr. S. B. Bhapkar, advocate for applicant
Mr. S.S. Kazi, advocate for respondent no.1

CORAM : SUNIL P. DESHMUKH, J.
DATE : 14th September, 2016

ORDER :

1. Heard learned counsel for the parties.
2. Purportedly aggrieved by order dated 16-05-2015 passed by District Judge-Presiding Officer, Maharashtra State Wakf Tribunal, Aurangabad, granting application Exhibit-5 filed by present respondents no. 1 to 4 in Wakf Suit No. 23 of 2015, applicant is before this court.
3. Present applicant is defendant no.1, whereas respondents no. 1 to 4 are the plaintiffs, in aforesaid Wakf suit.
4. After hearing learned counsel Mr. Bhapkar appearing on behalf of the applicant and Mr. Kazi appearing for respondent no. 1 and upon perusal of the impugned order, it appears that the Wakf

Tribunal has gone through the documentary evidence as had been appearing at this stage and considered the interim application accordingly and prima facie, it appears to have been appreciated that though applicant-defendant no.1 may be in possession of suit property bearing no. 759 admeasuring 3 acre, 13 gunthas situated at Ambajogai, yet it would not appear that defendant no. 1 has been able to establish its rightful ownership and lawful possession over the property and as such it is appreciated at this stage by the court that it may be an encroachment.

5. In paragraph no. 19 of the order impugned, the court has considered that since some construction activity is contemplated over the disputed property, an injunction in that respect had been sought by plaintiffs and case accordingly has been considered, finding that the plaintiffs have been able to show prima facie case and balance of convenience lies in their favour and if construction is allowed, then it may cause irreparable loss to the property and if temporary injunction is granted restraining defendant no. 1 from carrying out construction it cannot be said that defendant no. 1 would suffer irreparable loss.

6. The tribunal also appears to have gone through citations relied on, on behalf of defendant no.1. Under the circumstances, the application has been allowed, restraining defendant no. 1 from carrying out any construction over suit property.

7. Although it is being contended by Mr. Bhapkar on behalf of the applicant that while observing that defendant no. 1 is in possession of disputed property, an injunction ought not to have been issued in such a case. However, Mr. Kazi points out that injunction has not been granted in respect of claimed and alleged possession by defendant no. 1 over disputed area, but the same is in respect of carrying out construction over the disputed property.

8. The submission on behalf of respondent no. 1 carries substantial weight. This does not appear to be a case wherein discretion exercised can be said to be not by following judicial principles, requiring the same to be dabbled with.

9. Civil revision application, as such, stands rejected. However, it would be expedient that the suit proceedings may be carried on expeditiously.

SUNIL P. DESHMUKH,
JUDGE

pnd