

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9256 OF 2015

Madhu Ramesh Jain

Age: 63 Yrs., occu. Business,
R/o 414/2, Near Meharun Lake,
Shirsoli Road, Jalgaon.

= **PETITIONER**
(Orig. Plaintiff)

VERSUS

- 1) The State of Maharashtra
Through the Collector,
District Jalgaon,
Collectorate office,
Jalgaon.
- 2) Tehsildar, Jalgaon,
Tehsildar Office, Jalgaon.
- 3) The Jalgaon City Municipal
Corporation, Through its
Commissioner, Jalgaon,
Tq. And Dist. Jalgaon.
- 4) Supt. Of Land Records,
SLR Office, Jalgaon,
Jalgaon Collectorate,
Jalgaon.

= **RESPONDENTS**
(orig.Defendants)

Mr.Satyajit S. Bora, Advocate for Petitioner;

Mr.CV Dharurkar, AGP for Respondent Nos.1,2 & 4;

Mr.PR Patil, Advocate for Respondent No.3.

CORAM : P.R.BORA, J.

DATE : 6th June, 2016.

ORAL JUDGMENT:

1) Heard. Rule. Rule made returnable forthwith and heard finally with consent of the learned Counsel appearing for the parties.

2) By filing the present petition, the petitioner has taken exception to the common order passed by 3rd Joint Civil Judge, Senior Division, Jalgaon on 5th September, 2015 below Exhibits-26 and 46 in Regular Civil Suit No.260/2015. Both the aforesaid applications were filed by the present petitioner. The petitioner has filed the aforesaid civil suit seeking a declaration that the two orders both dated 6th August, 2015 passed by District Collector, Jalgaon(Respondent No.1) be declared null and void and consequently be quashed and set aside. Along with the civil suit, the petitioner had also filed an application seeking interim injunction by invoking the provisions under Order 39 Rule 1 of Code of Civil Procedure,1908 (for short the Code).

3) Respondent No.1 has filed his written say raising a preliminary objection as regards to the jurisdiction of the Court to try and entertain the suit so filed by the petitioner. According to Respondent No.1, the remedy available for the plaintiff was to file an appeal under the provisions of Section 20 of the Maharashtra Land Revenue Code, 1966 and no suit was liable to be entertained in the form and manner it was filed by the petitioner/plaintiff. A separate application was also filed by respondent No.1 on 2nd September, 2015 praying for deciding the issue of jurisdiction as a preliminary issue as per the provisions of Section 9A of the CPC.

4) After filing of such application by respondent No.1, the petitioner filed her say to the said application and also filed an application under Section 9-A(2) of CPC, praying for grant of stay to the effect, operation and implementation of two impugned orders dated 6th

August, 2015 passed by defendant No.1 till decision on the point of jurisdiction. Prior to that, one more application was filed by the petitioner on 24th August, 2015, at Exh.26 seeking order of *status quo* till disposal of the application at Exhibit-6 filed by her seeking temporary injunction. The said application (Exhibit-26) and the application filed under Section 9-A(2) (Exhibit-46) were commonly heard and decided by the Civil Court by a common order which is impugned in the present petition. The learned Civil Judge has rejected both these applications vide the impugned order.

5) Shri S.S.Bora, learned Counsel appearing for the petitioner, submitted that though a very just prayer was made by the petitioner that till the issue of jurisdiction is decided by the Court, implementation of the impugned orders be stayed or parties be directed to maintain status quo, the Civil Court has rejected the said prayer on erroneous grounds. The learned Counsel

further submitted that the Trial Court instead of restricting the discussion to the limited request made by the petitioners seeking protection for a temporary period, till decision on the point of jurisdiction, did enter into the discussion on merits, as if it was deciding the application for interim relief. The learned Counsel further submitted that the trial Court has lost sight of the fact that the petitioner had sought stay to the effect, operation and implementation of two orders dated 6.8.2015; one directing the Superintendent of Land Records to demarcate the area allegedly encroached by the persons named in the subject letter and other, directing the Commissioner, Jalgaon Municipal Corporation, to remove the encroachment alleged to be made by the persons named in the said letter, which contains the name of the present petitioner also. The learned Counsel submitted that even on merits, the petitioner has a strong prima facie case and balance of convenience is also in her favour. The learned counsel further submitted that

irreparable loss will be caused to the petitioner if the impugned orders are not stayed. The learned Counsel, therefore, prayed for setting aside the impugned orders and further prayed for allowing the application submitted by the petitioner before the trial court at Exhibits 26 and 46.

6) Shri Dharurkar, learned AGP, appearing for Respondent Nos.1, 2 and 4 supported the impugned order. The learned AGP submitted that the learned Civil Judge has rightly held that no prejudice is going to be caused to the plaintiff/petitioner if the defendants are permitted to demarcate the property in question. The learned AGP further submitted that the petitioner/plaintiff has failed in proving that there was a *prima facie* case in her favour and further that any irreparable loss was going to be caused if the order is not passed in her favour. In the circumstances, according to learned AGP, no interference is called for in the order

impugned in the present petition.

7) Shri P.R.Patil, learned Counsel appearing for Respondent No.3, submitted that whether the petitioner has made any encroachment on the portion of Meharun Lake is the subject within the domain of Respondent No.1 and Respondent No.3 is bound to implement the directions issued by Respondent No.1 in that regard. The learned counsel, therefore, prayed for passing appropriate orders in the matter.

8) What should be the considerations in deciding the application filed under Section 9A(2) of the Code is the limited issue to be addressed in the present petition.

9) Once an objection is raised as regards to the jurisdiction of the Court to entertain and decide the suit, it becomes imperative for the said Court in view of the mandate of Section

9A(1) of the Code to decide the said objection as a preliminary issue before granting or setting aside the order granting the interim relief.

10) The question arises what would be the course open for the plaintiff if his prayer for interim relief is not likely to be considered till the Court determines the issue of jurisdiction. Clause (2) of Section 9-A takes care of such a situation under which even during this interim period till adjudication of the preliminary issue, the Court is empowered to grant interim relief purely on interim basis. A mere objection to the jurisdiction does not instantly disable the Court from passing any interim order as may be called for in the facts and circumstances of the case.

11) The next question crops up whether the same principles would apply and the same tests to be applied while granting or refusing the relief as prayed under section 9-A(2) as are applied in

granting or refusing the reliefs prayed for under Order 39 Rule 1 of the Code? The answer in my opinion is "No". I however do not mean to say that such interim protection is to be invariably given as of right. What is contemplated by Clause (2) is that if the exigencies of the situation impress the Court that either of the sides needs to be protected, without wasting any time, however short it may, which may be consumed for determining the said preliminary issue, then the Court may grant such an interim relief as it thinks proper. No deeper scrutiny is thus required while granting interim relief under this Clause. The interim order so passed undoubtedly comes to an end with the decision of the Court on the point of jurisdiction. It is only after the affirmative decision on the issue of jurisdiction that the Court gets vested with the power to grant interim relief or set aside the order granting interim relief as the case may be. As such, while passing the order under Section 9A(2) of the Code, it is not the requirement of the law

that there shall be a deeper scrutiny whether all the three ingredients i.e. prima facie case; balance of convenience and irreparable loss, exist or not. If the Court chooses to adopt such course it would amount to decide the interim application without first deciding the issue of jurisdiction which is impermissible as provided under Section 9-A(1) of the Code and nothing would then remain to be considered at the hearing of the interim relief application.

12) In the instant matter, the trial court is noticed to have committed such mistake. Perusal of the impugned order shows that when the trial court was supposed to consider the application under Section 9-A(2) limited to the extent whether till decision of the application under Section 9-A, the plaintiff was liable to be given any protection from the apprehended action, the trial court indulged in a deeper scrutiny by framing points as if it was deciding the interim application. The Trial Court has utterly failed

in understanding the import of the provisions made under Section 9-A(2) of the Code. Such interim and most temporary protection, in my opinion, can only be refused if the Court finds that there is absolutely no case, even prima facie, for grant of such relief and more importantly if grant of such relief is likely to result in causing irreparable loss to the party opposing for grant of such relief.

13) The impugned order examined on above principles cannot be sustained. I need not to repeat that the trial court indulged in framing the issues and conducting deeper scrutiny as if it was deciding the application for interim relief. Moreover, while making such discussion the trial court has also failed in appreciating the facts and circumstances. The material on record reveals that the construction of the petitioner which is alleged to be an encroachment on the area of Meharun Lake, is in existence since last about 30 yeas. The material on record

further reveal that prior to the survey lastly conducted by the Government authorities, on the basis of which, it is alleged that the petitioner has made encroachment on the portion of Meharun Lake, on at least four previous occasions, such surveys were conducted and in none of such surveys, it was ever noticed that the petitioner has made any encroachment on the area of Meharun Lake.

14) The facts, as aforesaid, are sufficient to record a finding that the petitioner/plaintiff has a prima facie case in her favour. In view of the fact that the construction of the petitioner is in existence for the period of more than thirty years, no irreparable loss is going to be caused to the other side if effect and operation of the impugned order dated 6.8.2015 is stayed for some more period purely on temporary basis pending hearing and final disposal of Section 9-A application filed by Respondent/defendant No.1.

15) For the reasons stated above, the impugned order deserves to be quashed and set aside. It is clarified that if the Civil Court reaches to the conclusion that it has jurisdiction to try and entertain the suit, so filed by the petitioner, and is, therefore, required to decide the application for interim relief, the same should be decided on its own merits and the Civil Court shall not get influenced by the observations made by this Court in this judgment since all these observations are prima facie in nature.

16) In the result, following order, -

ORDER

(i) The common order dated 5.9.2015 passed by 3rd Joint Civil Judge, Senior Division, Jalgaon below Exhibits-26 and 46 in Regular Civil Suit No.260/2015, is quashed and set aside;

ii) The effect, operation and

implementation of the two impugned orders, both dated 6.8.2015, passed by Respondent No.1, is stayed pending hearing and final disposal of 9-A application filed by Respondent/defendant No.1;

(iii) The Trial Court shall expeditiously decide 9-A application, on its own merits, by giving appropriate opportunities to both the sides;

(iv) Rule is made absolute in aforesaid terms.

sd/-
(P.R.BORA)
JUDGE

bdv/