

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.176 OF 2016

(Narayan s/o Punja Arne, through LR's Vs. Additional Commissioner
and others)

WITH

CIVIL APPLICATION NO.177 OF 2016

(Babanbai Dhondiba Shejwal and others Vs. Narayan Punja Arne,
through LR's and others)

IN

WRIT PETITION NO.2971 OF 2010

Appearance in CA No.176/2016

Mr. Umakant Wagh h/f Mr. A.V. Hon, Advocate for the applicants.

Mr. D.V. Tele, AGP for State / respondent Nos. 1 to 4.

Mr. Sanket S. Kulkarni, Advocate for respondent Nos. 5 to 8.

Appearance in CA No.177/2016

Mr. Sanket S. Kulkarni, Advocate for the applicants.

Mr. Umakant Wagh h/f Mr. A.V. Hon, Advocate for respondent Nos. 1-b
to 1f.

Mr. D.V. Tele, AGP for respondent Nos. 2 to 5.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 12/01/2016

PER COURT :

1. The first civil application is filed by the legal heirs of the original petitioner seeking permission to apply to the Shirdi Nagar Panchayat for obtaining water connection for supply of drinking water to the premises which are subject matter of dispute in the writ petition.

2. The second civil application is filed by original respondent No.5 seeking an out of turn listing of Writ Petition No.2971/2010 for final hearing.

3. The applicants/petitioners in the first application points out the order passed by this Court dated 16/09/2011, by which the writ petition was admitted. The land in question is the Mahar Watan land covered by the Bombay Inferior Village Watan Abolition Act. Contention of the applicants/petitioners is that the father of the respondents has sold the suit property to the petitioner by a registered sale deed. The respondents in the petition have contended that the said transaction is void in view of Section 5(3) of the said Act.

4. Learned Advocate for the applicants/petitioners further indicates that this Court had admitted the petition after considering the submissions of the learned Advocates and has concluded that the possession of the suit property is undisputedly with the petitioners. Status-quo is directed to be maintained. Grievance, therefore, is that the applicants/petitioners cannot survive without water supply and hence the prayer seeking water connection be allowed.

5. Mr.Kulkarni, learned Advocate on behalf of respondent Nos.5 to 8 relies on their affidavit dated 21/12/2015. Contention is that the averments in the application were put forth in Civil Application No.14054/2013. The said application was disposed of on 06/12/2013. Documents annexed to the said application and averments set out therein are identical to the contents of this application. The case of the applicants is, therefore, hit by Order 2 Rule 2 of the CPC. He, therefore, submits that it has to be legally construed that the applicants have given up the prayer for a water connection in the light of the order of this Court dated 06/12/2013. He, therefore, prays that this application be rejected and the writ petition be listed for final hearing.

6. I have considered the submissions of the learned Advocates.

7. It appears from CA No. Sr.No.14054/2013 that the prayers set out have not been repeated in this application. This Court has concluded that there is no dispute that the possession of the suit property is with the petitioners. Grant of water connection would neither decide the rights of the litigating sides, nor would it affect their rights in any manner whatsoever.

8. It would be inhuman to expect a litigant to survive with the possession of a suit property without supply of a drinking water. The contention of the non- applicants that the applicants have not voiced any grievance on this count for the past about 6 years, would not mean that the applicants are precluded from putting forth a request as has been made in this civil application.

9. In the light of the above, CA No.176/2016 is allowed. Respondents/Non-Applicant Nos.1 to 4 shall issue necessary directions to the Shirdi Nagar Panchayat to consider the application of the applicants/petitioners dated 10/01/2012 and in the event of no legal impediment, an appropriate order granting water connection with an appropriate size be passed. Needless to state, this order shall neither create any rights in the applicant/petitioner, nor any equities in his favour, in as much as, it shall not be construed to be to the detriment of the contesting respondents in the writ petition.

10. This Court, by its order dated 16/09/2011, had listed the writ petition for final hearing in the week commencing from 21/11/2011. Similar orders were passed on 27/09/2013 in CA Stamp No.2802/2013 by which the petition was again listed for final hearing in the week commencing from 03/03/2014.

11. Considering the above two orders, CA No.177/2016 is allowed.
List WP No.2971/2010 for final hearing on 25/02/2016.

(RAVINDRA V. GHUGE, J.)