

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7618/2016

Central Railway & Ors.

... Petitioners

V/s.

Vishwanath Janu Naik & Ors.

... Respondents

Mr. Anil Singh, Additional Solicitor General with Mr. Arjun Patil and
Ms. Indrayani Deshmukh for the petitioners

Mr. Shailesh S. Patial for the Respondent Nos.1 to 4.

Mrs. M. S. Bane, AGP, "B" Panel Counsel for respondent Nos.15 and 16.

CORAM: K.K. TATED, J.

DATED : AUGUST 8, 2016

PC. :

1. Heard the learned Additional Solicitor General for the petitioner and the learned counsel for the respondent.
2. By this petition under Article 227 of the Constitution of India, the petitioner defendant Nos.1 to 3 are challenging the judgment dated 15.09.2015 passed by the learned District Judge 1 Mangaon, Dist. Raigad in Civil Misc. Appeal No.17/2015 setting aside the order dated 04.03.2015 passed by the Jt. Civil Judge, Senior Division, Alibaug below exhibit 41 in Regular Civil Suit No. 87/2014.
3. For the sake of brevity, the parties will be referred to as per their nomenclature in the suit i.e. petitioner as defendant Nos.1 to 3 and respondent Nos.1 to 14 as plaintiff and respondent Nos.15 and 16 as defendant Nos.4 and 5.

4. The plaintiff filed special civil suit No. 87/2014 before the Civil Judge, Senior Division, Alibaug for an order of injunction restraining the defendants from demolishing their structures as per notice dated 24.04.2014. The plaintiff also prayed in the said suit that the defendant should not dispossess them without following due process of law either by paying compensation and/or providing alternate accommodation. In that suit, the plaintiff made application below exhibit 5 under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 on 09.06.2014 restraining the defendant from taking possession and/or demolishing their property without following due process of law either by acquiring land and/or paying compensation.

5. The trial court, by order dated 10.12.2014 restrained the defendants from demolishing the plaintiff's house property, till the hearing and final disposal of the suit.

6. During pendency of the said suit, the defendant Nos.1 to 3 started construction/ doubling the railway tracks without disturbing the plaintiff's possession of suit properties. As the plaintiff obstructed the defendant's work in lying the railway line, the defendant Nos.1 to 3 made application under XXXIX Rule 1 and 4 of the Code of Civil Procedure, 1908 being exhibit 41 to restrain by an order of injunction the plaintiff in their work. Prayer clause (a) of the said application reads thus:

“(a) During the pendency of this suit an order of temporary injunction may please be passed against the plaintiffs restraining them from obstructing/ disturbing the activity of doubling of Railway Track either by themselves or through their agents,

contractors, relatives, villagers etc and/or order passed below exhibit 5 may be varied or modified.”

7. In that application the defendant specifically made a statement in para 4 and 6 that without disturbing the plaintiff's possession over the suit property and/or violating the order passed by the trial court on 10.12.2014 below exhibit 5, they want to complete the construction work of railway line.

8. After hearing both sides the Civil Judge, Senior Division, Alibaug allowed the application made by the defendant Nos.1 to 3 below exhibit 41 restraining the plaintiff from interfering with the defendant's construction work of railway line.

9. Being aggrieved by the said order passed by the trial court below exhibit 41, the defendants preferred Civil Misc. Appeal No.17/2015 in the court of learned District Judge No.1, Mangaon, Dist. Raigad. In the said appeal, the appellate court framed following points for consideration:

	POINTS	FINDINGS
1	Whether the defendant No.1 and 2 have made out a prima facie case ?	In the negative
2	In whose favour the balance of convenience lies ?	Balance of convenience lies in favour of the plaintiff
3	Whether defendant Nos.1 and 2 will suffer irreparable loss, if their application for temporary injunction exhibit 41 is rejected?	In the negative

4	Whether the interference is required by this court in the impugned order dated 04.03.2015 passed by the jt Civil Judge, Senior Division, Alibaug below exhibit 41 in Regular Civil Suit No. 87/2014	In the affirmative
5	What order	As per final order.

10. After hearing both sides, the learned District Judge 1 Mangon, Dist. Raigad allowed Civil Misc. Appeal No.17/2015 setting aside the order dated 04.03.2015 passed by the Jt. Civil Judge, Senior Division, Alibaug below exhibit 41 in Regular Civil Suit No.87/2014. The appellate court mainly allowed the plaintiff's Misc. Appeal on the ground that there is no provision under which the defendant can file application for injunction restraining the plaintiff in his suit. Hence, the Writ Petition.

11. The learned Additional Solicitor General of India appearing for the petitioner submits that the impugned order passed by the appellate court dated 15.09.2015 in Misc Civil Appeal No.17/2015 is against justice, equity and good conscience and same is liable to be set aside. He submits that the appellate court mainly allowed the plaintiff's appeal on the ground that there is no provision in the Code of Civil Procedure, 1908 by which the defendant can make application for injunction against the plaintiff in his suit. He submits that the appellate court failed to consider the fact that the defendant made a statement before the trial court as well as filed undertaking that they are not going to disturb the plaintiff's possession over the suit properties. Moreover, they also specifically made a statement before the trial court that they will construct the railway track in such a way that the plaintiff's structure will not be affected in any way. He submits that the

applicant Railway Authority spent more than Rs.500 crores on this project of lying railway line. He submits that out of 142 km. railway line, they already completed the work of more than 140 km. He submits that because of present dispute, only 2 km work is pending for last more than two and half years. He submits that because of injunction order, it was not possible for the defendant to complete their work of lying 142 km railway lines. He submits that because of present litigation, the public at large is facing several problems.

12. Additional Solicitor General of India submits that the appellate court erred in coming to the conclusion that the defendant cannot make an application for injunction in the suit filed by the defendant against them. He submits that as per the provisions of Order XXXIX Rule 1 and 4 u/s.94E and 151 of the Code of Civil Procedure, 1908, the court has right to pass an order of injunction restraining the plaintiffs from violating the defendant's right. In support of this contention, he relies on the judgment of the Apex Court in **Manohar Lal Chopra Vs. Rai bahadu Rao Raja Seth Hiralal 1962 SC 527 (para 18 and 19), Harishchandra Narayan Maurya Vs. Rajendraprasad Dargahi Varma 1997(3) Mh.L.J. 437 (para 11)** and **Ramalah Vs. Gowdappa MANU/KA/0178/1988**.

13. On the basis of this submission and the law declared by the Apex Court as well as this court, the Additional Solicitor General of India submits that the impugned order passed by the appellate court below exhibit 41 on 04.03.2015 is against justice, equity and good conscience and same is liable to be set aside.

14. On the other hand, the learned counsel for the plaintiff vehemently opposed the Writ Petition. He submits that they filed the suit against the defendant restraining them from demolishing their house property as per notice dated 23.04.2014. He submits that the defendant wants to disturb their possession by constructing railway line from their property without acquiring and/or paying any compensation to that effect. He submits that they have no objection if the defendant acquired their property and make the payment of compensation immediately. He submits that if the defendant is permitted to construct the railway line, same will affect their rights to stay in the suit premises.

15. The learned counsel for the plaintiffs submits that in the present proceedings the office of the Collector, Raigad at Alibaug submitted report dated 28.08.2015 stating that because of the existing railway track, more than 24 cattle and 7 persons lost their lives in the railway accident in that area. He submits that these facts were considered by the appellate court and dismissed the application made by the defendant below exhibit 41 by which they obtained injunction restraining the plaintiff from disturbing their work activities for constructing the railway line. He submits that the trial court rightly held that the defendant cannot apply for an order of injunction in the plaintiff's suit without filing counter claim. Hence, there is no substance in the Writ Petition and same deserves to be dismissed with compensatory costs.

16. Heard both sides at length. It is to be noted that, in the present

proceedings, the defendant Nos.1 to 3 specifically made a statement before the trial court that they do not want to demolish the plaintiff's suit structure nor they want to construct the railway line on plaintiff's property. When the defendant started construction of railway line, the plaintiff, along with villagers started disturbing their construction activities. Therefore, the defendant Nos.1 to 3 made application below exhibit 41 for an order of injunction restraining the plaintiff from disturbing the defendant's activities for carrying out construction of railway line. It is to be noted that, apart from that, the defendant given an undertaking before the trial court that they are not going to demolish the defendant's structure till hearing and final disposal of the suit. Without considering all these facts, the appellate court, by impugned order dated 15.09.2015 set aside the order dated 04.03.2015 passed by the trial court below exhibit 41 mainly on the ground that the defendant has no right to make an application for injunction against the plaintiff in his suit.

17. It is to be noted that, in the authorities referred to hereinabove, the Apex Court as well as this court specifically held that the defendant can make an application for an order of injunction against the plaintiff in his suit and that can be decided on its own merits.

18. Considering these facts and the undertaking given by the defendant in the trial court about not demolishing the plaintiff's suit property till disposal of the suit, I am of the opinion that the defendant has made out a case for allowing them to complete the construction of railway line.

19. At this stage, the learned counsel for the plaintiffs orally applied for stay of this order. Considering the fact that the defendant Nos.1 to 3 are not going to disturb the plaintiff's possession of suit property, out of 142 kms., the work of 140 km is over and defendants invested more than Rs.500 crores, I do not find any reason to stay the present order.

20. Hence, following order is passed:

- a. Impugned order dated 15.09.2015 passed by the learned District Judge 1 Mangaon Dist. Raigad in Civil Misc. Appeal No.17/2015 is set aside.
- b. Order dated 04.03.2015 passed by the learned Civil Judge, Senior Division, Alibaug below exhibit 41 in special civil suit No. 87/2014 is restored to file.
- c. No order as to costs.
- d. Oral stay application of the plaintiffs stands rejected.

(K.K. TATED, J.)