

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 5319 OF 2010

1. Shri Omprakash Pannalal Bhatia
2. Shri Ramnarayan Pannalal Bhatia
Both residing at Nira-Shivtakrar,
Tal. Purandar, Dist. Pune. ... Petitioners

v/s

1. Shri Uttamrao Vithalrao Ghule,
2. Shri Kishorkumar Vithalrao Ghule
3. Smt. Shashikala Kashinath Ghule,
All residing at Nira-Shivtakrar,
Tal. Purandar, Dist. Pune. ... Respondents

Mr. Siddesh Pilankar i/by Uday Warunjikar for the petitioners.

Mr. S. P. Thorat for the respondents.

Coram: N.M. Jamdar, J.

Dated: 1 SEPTEMBER 2016

ORAL JUDGMENT:

By this writ petition, the Petitioners challenge the order passed by the learned District Judge, Pune, dated 6 May 2010, allowing the Miscellaneous Civil Appeal filed by the Respondents and setting aside the order passed by the learned Civil Judge, Junior Division, Saswad. The suit is filed by the Petitioners on 26 November 2000, seeking an

order of injunction. The learned Civil Judge, by an order dated 21 March 2005 allowed the application for temporary injunction. Miscellaneous Civil Appeal filed by the Respondents was allowed by the learned District Judge on 6 May 2010.

2 Heard learned counsel for the parties.

3 When the petition had come up on board on 25 August 2016, the statement of the learned counsel for the Respondents that the construction is complete, was recorded. The learned counsel for the Respondents had also placed certain photographs on record. The learned counsel for the Petitioners had sought time to take instructions. Thereafter the matter is taken up today. Pursuant to the statement made earlier, the learned counsel for the Respondents has tendered the photographs on affidavit and has also annexed certain permissions. The learned counsel for the Petitioners seeks further time. The factual assertion that the construction is complete was brought to the notice of the learned counsel for the Petitioners on the earlier date itself and the learned counsel for the Petitioners had taken time, however, no contra material is placed on record by the Petitioners.

4 The order impugned is of the year 2010. There was no interim order restraining the Respondents from carrying on with the construction. In the meanwhile, the Respondents have carried out

construction and has also placed on record copy of the completion certificate. There is no reason to disbelieve the statement made on oath by the Respondents. In any case, the suit filed by the Petitioners is pending. Since the construction is carried out during the pendency of the suit, the learned Civil Judge, while disposing of the suit, can always pass appropriate orders in respect of the construction, if necessary. Even otherwise, the learned District Judge has found that the *prima facie* case was not in favour of the Petitioners neither the balance of convenience. The learned District Judge has already directed the learned Civil Judge to decide the suit as expeditiously as possible. The learned Civil Judge will proceed to do so, since the order directing disposal of the suit was passed in the year 2007.

5 All contentions of the parties on merits of the suit are kept open.

6 Rule discharged. No order as to costs.

(N. M. Jamdar, J.)