

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST.) NO.31515 OF 2016

Balaji Social Foundation through the Secretary
Satish Shantaram Mhaske ... Petitioner
Vs.
The Commissioner, Nashik Municipal Corporation
and others ... Respondents

Mr. Shriram S. Kulkarni for Petitioner.
Mr. Murli Patil for Respondent No.1-Corporation.
Mr. Sandeep Babar, AGP for Respondents No.2 and 3.

CORAM : R. G. KETKAR, J.
DATE : NOVEMBER 18, 2016

P.C. :

Not on Board. At the request of Mr. Kulkarni, taken up in the production Board.

2. Heard Mr. Kulkarni, learned Counsel for the petitioner and Mr. Babar, learned AGP for respondents No.2 and 3 at length. As Mr. Patil regularly appears on behalf of the respondent No.1, I requested him to accept service on behalf of the respondent No.1. Mr. Patil graciously accepted the request and appeared in the matter.

3. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 16.11.2016 passed by the learned 2nd Joint Civil Judge Senior Division, Nashik below exhibit-5 in Regular Civil Suit No.676 of 2016. By that order, the learned trial Judge rejected the application made by the petitioner, hereinafter referred to as 'plaintiff', for injunction restraining respondent No.1 from acting upon the notice dated 21.10.2016.

4. The petitioner has instituted Suit on 27.10.2016 inter alia praying

for declaration that the notice dated 21.10.2016 issued by the respondent No.1 is illegal; for restraining the respondent No.1 perpetually from acting upon the notice dated 21.10.2016. Along with the Suit, plaintiff also took out application for temporary injunction restraining respondent No.1 from acting upon the notice dated 21.10.2016. Mr. Kulkarni made serious grievance that the learned trial Judge did not grant any ad-interim order and rejected the application exhibit-5 only on 16.11.2016. He submitted that having regard to the fact that immediately after receipt of the notice dated 21.10.2016, plaintiff has instituted Suit on 27.10.2016, till such time application exhibit-5 was decided, the learned trial Judge should have protected the property by issuing ad-interim relief. The learned trial Judge without granting ad-interim order, ultimately, rejected the application on 16.11.2016.

5. Mr. Kulkarni submitted that aggrieved by the order passed by the trial Court immediately on 17.11.2016, plaintiff filed Civil Miscellaenous Appeal before the District Court. On that day, the learned District Judge issued notice to the respondent No.1, returnable on 18.11.2016 i.e. today on the ground that respondent No.1 has filed Caveat. Even the learned District Judge did not pass any order of grant of ad-interim protection. With the result, officers of the respondent No.1 have started demolition in the morning. He, therefore, got the papers produced for interim protection.

6. On the other hand, Mr. Patil, upon taking instructions, states that the temple is demolished and the D.P. Road is cleared and the demolition of the rest of the structures on the land belonging to and in possession of the first respondent is in progress. He also states that the idol is removed from the site and first respondent is ready and willing to handover idol to the petitioners herein.

7. In view thereof, Mr. Kulkarni submits that petitioner will amend the Suit so as to pray for reconstruction of the temple as also for compensation. Leave to amend as prayed for is granted. Amendment shall be carried out within 14 days from today and the amended slips shall be made over to the first respondent.

8. Mr. Kulkarni further submits that petitioner will also submit building proposal to the first respondent Corporation for construction of the temple.

9. In view thereof, it will be open to the petitioner to submit proposal for the permission to the first respondent Corporation. If such proposal is submitted, first respondent will take decision in accordance with law. Before parting, it is necessary to observe that once the litigant moves the Court for interim protection, the Court has to pass appropriate order considering the facts and circumstances of each case by passing a speaking order. Merely issuing notice does not serve the purpose. In the present case, though the Suit was instituted on 27.10.2016, no ad-interim relief was granted and straightway the application was rejected on 16.11.2016. Immediately, on 17.11.2016, petitioner filed appeal before the learned District Judge. The learned District Judge issued notice to the respondent No.1, returnable on 18.11.2016 on the ground that caveat was filed. Even if caveat is filed, it does not preclude the Court from passing ad-interim order in appropriate cases. Even that was not done by the learned District Judge. Be that as it may, as now the temple is demolished and idol is removed, no relief can be granted. Petition is rendered infructuous and is disposed of as such. Order accordingly.

(R. G. KETKAR, J.)