

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3150/2015

(NITIN VASANTRAO SHENDE **VERSUS** REKHA GUNAPRAKASH BORKAR & OTHERS)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri Yogesh V. Nayyar, counsel for the petitioner.

CORAM : SMT. VASANTI A NAIK, J.

DATE : OCTOBER 10, 2016.

By this writ petition, the petitioner challenges the orders passed by the trial Court on 09.03.2015 and 12.05.2015, directing the petitioner to remove the fencing and give access road to the respondents to enter their own property and further granting police aid to the respondents for implementation of the order dated 09.03.2015.

The respondents are the original plaintiffs. They had instituted a suit against the present petitioner-defendant for a declaration that the sale-deeds executed by them in favour of the petitioner on 25.06.2009 and 01.02.2011 are null and void and not binding on the plaintiffs. The plaintiffs-respondents had sought a direction against the petitioner to handover the peaceful possession of the property in respect of which the aforesaid sale-deeds were executed. An order permanently restraining the petitioner from entering into the suit property that was allegedly sold by the sale-deeds dated 25.06.2009 and 01.02.2011 was also sought. While seeking some other ancillary relief, the plaintiffs-respondents also sought a permanent mandatory injunction directing the petitioner-defendant to demolish the illegal fencing erected by him and give access to the plaintiffs-respondents to enter the rear portion of Plot No.12-B. Along with the suit, the plaintiffs-respondents filed an

application for temporary injunction restraining the petitioner from making construction in the property. A temporary mandatory injunction, that the petitioner should remove the fencing and permit the respondents-plaintiffs to enter into the rear portion of Plot No.12-B, that was owned and possessed by them, was also sought. During the pendency of the application at Exhibit 5, an application was moved by the respondents-plaintiffs for a direction to the petitioner to give the access to the plaintiffs-respondents by removing the fencing erected by the petitioner in front of the house of the plaintiffs-respondents till the filing of the reply by the petitioner-defendant to the application at Exhibit 5. It was stated in the application that the petitioner-defendant had illegally restricted the ingress and egress of the plaintiffs-respondents from their property on the rear side, by erecting a fencing. It was stated in the application that the plaintiff no.3-respondent no.3 was pregnant and had to visit the clinic for treatment. It was stated that if the fencing, that was erected by the petitioner in front of the house of the plaintiffs-respondents was not removed, the plaintiff no.3 would not be able to visit the clinic and irreparable loss would be caused to the plaintiffs. Though the application was filed on 23.02.2015 and the Court directed the petitioner to submit the say, the petitioner did not file the say to the said application till 09.03.2015, when the first impugned order was passed. The Court observed in the said order that the petitioner was not filing a reply to the application for grant of temporary injunction at Exhibit 5, and it was clear from the photographs annexed to the application that by erecting a fencing, the petitioner had restricted the ingress and egress of the plaintiffs from their property. The trial Court, therefore, directed the petitioner to remove the fencing by the next day. Since the petitioner did not

remove the fencing, by the impugned order dated 12.05.2015, the Court granted police aid to the respondents-plaintiffs for the implementation of the order dated 09.03.2015.

On hearing the learned counsel for the petitioner and on a perusal of the impugned orders as also the plaint filed by the respondents, it appears that the trial Court was justified in directing the petitioner to remove a part of the fencing and give access to the plaintiffs for ingress and egress to their own property on the rear side of the property possessed by the petitioner. Though the respondents-plaintiffs had filed an application at Exhibit 5, seeking temporary-mandatory injunction, the petitioner had not filed a reply to the injunction application at Exhibit 5, till 09.03.2015. The trial Court found from the photographs and the other material on record that if a direction like the one in the order dated 09.03.2015 was not issued, the plaintiffs would not have an ingress and egress to their own property that was on the rear side of the property possessed by the petitioner. It appears from the application of the plaintiffs that the plaintiff no.3 was pregnant and was required to attend the clinic for medical treatment. In the absence of any reply to the application at Exhibit 5, the trial Court held that it was necessary to direct the petitioner to give access to the plaintiffs for ingress and egress from their property. The order of the trial Court appears to be just and proper. Since the order dated 09.03.2015 was not implemented by the petitioner, the trial Court rightly provided police aid to the respondents-plaintiffs to ensure that the order dated 09.03.2015 was implemented. There is nothing wrong with the impugned orders so as to interfere with the same in exercise of the writ jurisdiction. The only submission made on behalf of the petitioner, that since the order dated 09.03.2015 grants a relief

in the nature of final relief that is sought by Prayer Clause (6) in the plaint the trial Court should not have granted the same, is not well founded and is liable to be rejected. Since the trial Court found that the property of the petitioner was on the front side and the property of the respondents-plaintiffs was on the rear side and the petitioner was not permitting the plaintiffs-respondents an access to their property, the trial Court was justified in issuing a temporary mandatory direction against the petitioner to remove a part of the fencing and grant an access to the plaintiffs-respondents for ingress and egress.

Since no fault can be found with the impugned orders, the writ petition is dismissed of with no order as to costs.

It is needless to mention that this order may not come in the way of the petitioner when the matter is decided by the trial Court, on merits.

Order accordingly.

JUDGE

APTE