

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7487 OF 2017

(Municipal Council, Jamner Vs. Ishwarlal Manoharlal Dhariwal and others)

Mr.G.V.Wani, Advocate for the applicant.

Mr.N.T.Bhagat, AGP for State/respondent Nos. 4 to 6.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 08/09/2017

PER COURT :

1. The petitioner is aggrieved by the order dated 31/03/2016 passed by the Trial Court allowing Exh.6 under Order 39 Rule 1 in RCS No.57/2016. The petitioner is also aggrieved by the judgment of the Appellate Court dated 10/03/2017 by which Civil Misc.Appeal No.23/2016 has been dismissed.

2. Mr.Wani, learned Advocate for the petitioner/Municipal Council has strenuously criticized the impugned orders. He submits that the original plaintiff has resorted to an encroachment. The Trial Court has lost sight of the fact that prima-facie an encroachment is visible. A residential house has been constructed by the plaintiffs, a portion of which appears to be on a Government land and that portion of the residential house, deserves to be demolished. Since the DP plan for widening of the road has been undertaken and the said portion of the

house would overlap the area demarcated for the laying of the road, the Trial Court as well as the Appellate Court should not have granted injunction.

3. Mr.Wani has drawn my attention to the 15 grounds formulated by him in the petition.

4. Having considered the strenuous submissions of the learned Advocate and having gone through the petition paper book, it appears that the plaintiffs are the owners of the entire land Gat No.443, in the light of the observation of the Trial Court and have constructed a residential house on their own land. By the proposed DP road, some portion of the land of the plaintiffs appears to be within the development plan.

5. The plaintiffs have raised a serious issue as to whether the DP plan was modified on account of the reasons mentioned in the plaint and the previous enmity with an elected peoples' representative to the State Legislative Assembly that has led to a deliberate move for including the portion of the plaintiffs' land in the DP plan. These contentions need to be gone into by the Trial Court.

6. If injunction was not to be granted and on account of lack of protection, if the portion of the residential house was to be demolished, it would lead to a complex situation if eventually the plaintiffs succeed in their suit. Considering this position, the balance of convenience lay heavily in favour of the plaintiffs. Irreparable harm, serious prejudice and manifest inconvenience would be caused to the plaintiffs if the protection is to be vacated.

7. Considering the above, I do not find that the impugned interlocutory order passed by the Trial Court and the impugned judgment of the Appellate Court could be termed as being perverse or erroneous and likely to cause gross injustice to the plaintiffs in view of the law laid down by the Apex Court in the matters of Syed Yakoob Vs. K.S. Radhakrishnan and others [AIR 1964 SC 447] and Surya Dev Rai Vs. Ram Chander Rai [(2003) 6 SCC 682].

8. This petition, being devoid of merit, is therefore, dismissed.

9. Learned Advocate prays for expediting the suit. Since the suit is of the year 2016, I am not directing the Trial Court to decide the same within a particular time frame. In the event, the Trial Court finds that this suit can be decided within some time, it may consider

its pendency and accordingly deal with the matter.

(Ravindra V.Ghuge, J.)